Section 1

PROPOSED SETTLEMENT OF MAINE INDIAN LAND CLAIMS

HEARINGS

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

S. 2829

TO PROVIDE FOR THE SETTLEMENT OF THE MAINE INDIAN LAND CLAIMS

JULY 1 AND 2, 1980
WASHINGTON, D.C.

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objectives. I am now advised, and my study of the proposed legislation to the Maine Legislature confirms, that there is indeed a nation within a nation concept contained within the proposed bill. However, I have also been further advised that the present bill limits the separate nation status that recent court decisions have rendered. While I disagree with these recent court decisions, I would simply challenge the Legislature to make certain they are not extending separate and preferential laws for Indian Citizens as contrasted with our non-Indian Citizens. If this is so, the State of Maine has indeed rendered favored treatment to one class of citizens, or in effect, endorsed the concept of a second class of citizens vis a vis a first or preferential class of citizens at the expense of the rest of the citizens of Maine.

Once again, I commend the Governor and the Attorney General and I firmly believe each of them is trying to do what is right and fair for all people of Maine. However, I urge each and every legislator to examine this entire proposal very carefully and avoid being pressured or rushed on hasty decisions and matters as important as this for the people of Maine and the entire United States from the standpoint of the precedent that might be set. During the time I was in office, I was advised that there were approximately ninety-five Indian cases pending against the citizens here in the United States. At the time I left office, I was advised that there were 1,500 cases pending against these same citizens of the United States. I am now advised by Senator William Cohen, the Senior Minority Member of the Indian Affairs Committee of the United States Congress, that there are 9,500 cases pending concerning water rights, hunting and fishing rights, land titles, and yes, questions involving nation within a nation, separate rules and laws and ordinances, and I am simply urging the Legislature to weigh not only what is best for Maine but also what our responsibility is to the entire United States from the standpoint of the precedent we might set. Based on my experience with the Maine Legislature, they will try to do what is right for our Indian citizens as well as our non-Indian citizens. I wish them well in this regard.

Senator MITCHELL. It is crucial that the people of Maine, the Members of this Congress, and the people of this country feel and believe that this legislation has been exposed to the most careful searching scrutiny and that what emerges is the product of the best efforts of all concerned, including the membership of this committee.

Before closing, I want to commend all parties involved in the development of this proposal. It is obviously the result of many years of hard work and effort. I especially want to commend my colleague from Maine, Senator Cohen, for the leadership and guidance he has displayed on this matter. I look forward to working with Senator Cohen on this and other matters in the coming months.

Thank you, Mr. Chairman and Senator Cohen.

Senator MELCHER. Thank you, Senator Mitchell.

We are delighted to have your assistance, cooperation, and efforts in this hearing process on the bill.

Senator Inouye, do you have any remarks?

Senator INOUYE. No, Mr. Chairman.

Senator MELCHER. Thank you. Our first witness will be Secretary Andrus. We are delighted to have you here to advise us on the views of the Department and the administration concerning this bill.

STATEMENT OF HON. CECIL D. ANDRUS, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY RALPH REESER, ACTING DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, AND TIM VOLLMANN, ASSISTANT SOLICITOR FOR INDIAN AFFAIRS

Secretary ANDRUS. Thank you very much, Mr. Chairman.

First of all, I would like to introduce the two gentlemen at the witness table with me. On my immediate left is Ralph Reeser who

is the Acting Deputy Assistant Secretary for Indian Affairs of the Department. On my immediate right is Mr. Tim Vollman who is from the Solicitor's Office. Both men have been involved, not only in this legislation that is before you today, but in the negotiations and discussions that have been going on all this time.

Now, Mr. Chairman, I respectfully request that my testimony, as submitted, be put into the record intact. It is quite lengthy, as you have had the opportunity to see, and then I will just summarize before we get to the questions.

Senator MELCHER. Your entire statement will be made a part of the record at the end of your oral testimony.

Secretary ANDRUS. Thank you, Mr. Chairman and members of the committee. As you have stated, I am here today to discuss this administration's views on S. 2829, known as the Maine Indian Claims Settlement Act of 1980.

We fully support the concept of a negotiated settlement as the means for the resolution of the Maine Indian land claims, and we hope that S. 2829 will lead to a final settlement of these claims.

We recognize that a Federal contribution is necessary to achieve a negotiated settlement, and we do not object to the contribution proposed by this bill. The proposed contribution of $81.5 million is substantially higher than the administration has previously supported. However, because years of continued litigation would have a severe impact upon the citizens of Maine—as has been pointed out by both Senators from Maine here this morning—and also because the settlement proposal is based on the agreement of all relevant parties in Maine and should therefore provide a lasting solution to this problem, we do not object to the Congress providing for the Federal contribution contemplated in S. 2829.

It would not be responsible for the administration simply to state its general position on this legislation. For that reason, we have carefully examined all aspects of the proposal in order to insure that the broad interests of the tribes and the United States are well served under it.

Our examination has produced a series of questions concerning details of S. 2829 which we would like to raise to the committee for your consideration as you examine this legislation. I would say at this point, the questions submitted into the record by Senator Mitchell will be responded to by our Department. It may not be possible, Senator, to achieve that in the 2-day hearing period, but the record will be held open, I assume.

Senator COHEN. The record will be held open for 30 days, if necessary. We have planned hearings for today and tomorrow. If additional witnesses are going to be called, we are going to try to work in a third day. So there will be adequate time for you to respond.

Secretary ANDRUS. Thank you. We look forward to working with the Congress to resolve these questions. I think, in fairness to Senator Mitchell and the State of Maine, that we should respond to those questions.

Before we get into the details of S. 2829, let me just quickly summarize, because Senator Cohen summarized it very accurately in his opening remarks, the history of the 8 years.

I will not repeat the record of litigation that the Senator pointed out because it was very accurate. We get into the court decisions and

then we enter into 1977. This administration came into office early in 1977. The President of the United States, President Carter, appointed the former Supreme Court Justice that you referred to, Senator. We worked on it in Interior. I have personally had innumerable meetings, not only with the Indian representatives from the tribes but also with the representatives of the State, representatives of private landowners, and private citizens over this matter.

As has been pointed out, we had many proposed solutions, all of which failed because one or more of the parties would not, or could not, concur.

However, the Department of Interior continued to work to bring about a resolution of this situation. That brings us to today, Mr. Chairman, where I think we are on the threshold of the solution that has been encouraged here by yourself and your colleagues.

We are pleased, and we are encouraged that the tribes and the State have been able to work out the agreement. However, we have a number of questions about the role of the Department of the Interior in connection with that agreed upon relationship and believe that a number of points need revision or perhaps just clarification.

Again, we pledge our willingness to work with the entities involved to bring about a clarification and a resolution of those questions that we have. Those questions are enumerated in the testimony, and I will not go into them except to touch on two major points.

Senator COHEN [acting chairman]. We did not receive a copy of your testimony until just shortly before the meeting. We have not had a chance to look over your full text so that I might familiarize myself with the issues that you have raised. So if you will take a few moments to at least outline those specific questions you do have, it would be helpful.

Secretary ANDRUS. I will do that. I would point out that, while we are pleased that the State, the tribes and the private landowners and hopefully the Congress of the United States and the administration are working toward a solution, we believe that S. 2829 raises two major issues on which further discussion is needed.

First of all, the total level of funding, and, second, the intergovernmental relationship among the tribes, the State, and the Federal Government.

With respect to the Federal funding of the proposed settlement, we support the allocation of $27 million to a trust fund for the tribes. We have supported that position previously in other proposed resolutions. We also do not oppose the allocation of no more than $54.5 million for the land acquisition to purchase the 300,000 acres of average Maine woodlands that have been discussed.

S. 2829 has, in addition, financial implications beyond these outright payments which we believe would be unwarranted. As drafted, section 8(a) of the bill would prevent Federal agencies from considering any payments made for the benefit of the tribes pursuant to the settlement in determining State eligibility for participation in Federal financial aid programs.

Section 8(a) would apparently allow payments by the State agencies to the Indian tribes to be supplanted by Federal payments for the same or similar purposes.

A quick example to what I am referring is this: If the State withdrew all health care funding for its Indian citizens in anticipation of

Indian Health Service aid, the incremental cost to the Indian Health Service is estimated to be about $1 million per year. If this provision were to be established nationwide, it would raise the budget for that purpose by almost $300 million. I am not sure that is what was intended in this legislation, and I am saying that we need clarification in this regard. And there are other questions——

Senator COHEN. There are a number of congressional acts on the books which prohibit or seem to indicate a congressional intent to prohibit or prevent States from allowing Federal funds to supplant State funds. I am thinking specifically of the Johnson-O'Malley Act in which there is the rather clear intent to prevent States from supplanting their own funded Federal dollars. Is that what you are referring to in this?

Secretary ANDRUS. Yes, sir. That is exactly what I am referring to, and there are many pieces of legislation that prohibit the supplanting of Federal for existing State levels of aid. I am just saying to you that if you look closely at section 8(a)—I am not at all sure that that prohibition is there in this regard. We call that to your attention.

The Johnson-O'Malley Act is another, and there are other provisions.

We are concerned with the total Federal financial exposure in this regard. We ask you to look at those and some of the others that we enumerate there.

Our second major question with S. 2829 is with respect to the, let's call it, novel jurisdictional relationships which would be created by the bill and the State Implementing Act. Our foremost concern in this regard is the lack of clarity in defining the role of the Federal Government as trustee to the tribes.

Let me make it clear that we do not regard the State tribal agreement as one calling for termination of these tribes. As we read the State legislation and S. 2829, the tribes' governmental authority over their own members will continue to be recognized. The Passamaquoddy Tribe and the Penobscot Nation will, as we read the legislation, not be entities created and wholly subject to State laws beyond their control, but will continue to be Indian tribal entities subject to the ultimate authority of Congress under the commerce clause of the Constitution of the United States, and subject to certain restrictions on their authority as a result of this jurisdictional compact with the State of Maine.

Our reading of section 6 of S. 2829 and related provisions of the State Implementing Act is that the respective authority of the State and the tribes would not be radically different from the jurisdictional relationship which exists among other States and tribes. However, the relationship in this settlement proposal is not always clear, as you go through the bill. We think a reworking of the relevant language is in order. Furthermore, because the numerous references in S. 2829 to the Maine Implementing Act make an understanding of the jurisdictional relationships difficult, we believe that such relationships should be spelled out in the Federal legislation.

Under the State Implementing Act, the Passamaquoddy Tribe and the Penobscot Nation would largely retain their inherent authority over their own members, but would also be treated as municipalities

under the State law. We have a conceptual problem here, Mr. Chairman, with this model. Maine municipalities derive their powers from their individual charters, but the two tribes have no constitutions or charters, or even a traditional governmental structure. They have long operated under State laws which would be repealed by the Implementing Act. To clarify the jurisdictional relationships and to provide for viable tribal governments in the future, we recommend that S. 2829 be amended to provide for the development of tribal constitutions and charters along the lines provided in the Indian Reorganization Act.

Senator COHEN. Has not the Department of the Interior, or some of its attorneys, been working in conjunction with either counsel for the tribes or in connection with the State in developing this settlement, or have you been totally excluded? Have you had no role of participation so that we come on this first day of hearings saying these issues have not been dealt with, and that there is a problem as far as treating tribes as municipalities, and it is a problem as far as CETA funds or general revenue sharing which has not been contemplated? What has been the role of the Department of the Interior in this particular settlement?

Secretary ANDRUS. The role of the Department of the Interior has been very active all the way through except from about late November 1979 till March 1980. There was kind of a little void in communications there. As a matter of fact, I read about the $81.5 million in the newspaper. I am not saying that members of my staff were not aware, but I have been pretty much involved in this and that prompted a phone call from me to a representative of the tribes.

We get along well, I think. There was a time there when the tribes, the State, and the private landowners seemed to be working without us. I do not object to that, but that probably has caused the drafting of that legislation without our involvement and has probably caused some of these questions to be raised at a later date.

Again, we are not outside looking in. We have open lines of communication now. We have appointments set up for, I believe, this weekend and next week with representatives of the tribes and the State to try and work these out before the Senate comes back on July 21. We will report to you our success or lack of success in working out these details.

In all honesty, I have to say there was that 3-month period of time when our communications were curtailed. I would like to think it was just because it was the holiday season and nobody wanted to bother us.

Senator COHEN. That brief hiatus has resulted in the possibility of a potential of costing the Federal Government $300 million if, in fact, your interpretation is correct on the first count about the total level of Federal funding that might be required, and it has introduced an entirely new relationship between the State and tribes as not recognized in any other State in the country. So, that brief hiatus has precipitated a result which is certainly unique and far reaching as far as potential costs to the Federal Government.

Secretary ANDRUS. In response, let me say I am not finding fault. I do not think these apparent flaws are fatal. I think we should continue to work to a resolution of this problem. I hope that the time between now and when you return from the recess, we will be able to come to you and say that we have worked them out.

On many of the questions that we asked for clarification we find that representatives of the State and the tribes agree with our interpretation. Others, there may be questions on, but given those 3 weeks that we have, Senator, we will put forth every effort to do it.

Senator COHEN. It is my understanding that you had sent land appraisers or evaluators to the State of Maine to make an assessment as to the fair value of the land that has been at least potentially agreed upon. Is that correct?

Secretary ANDUS. Basically, it is correct. We started out in 1977 to value some of this land, which was $112 per acre, give or take, depending on whether it had just been cut or whether it had good second and third growth coverage on it. Now, 3 years have gone by. You have inflation. You have different values of different lands. We believe that the prices are responsible and very close. You might quibble about one 40-acre tract, but I do not think that it is that far off at the current rate of $182.

Senator COHEN. So it is your judgment that the price per acre is within the bounds of reasonableness, and I conclude from your remarks that the 300,000-acre minimum demand of the tribes also is reasonable in your mind?

Secretary ANDRUS. Yes; in the early settlement, Senator, we were asking for other methods of financing the acquisition of 300,000, but we were never in a position of quarreling with the Indian tribes as to the amount of land that was necessary.

Senator COHEN. Do you have more?

Secretary ANDRUS. I have one concluding paragraph.

I would like to say on the record that it is critical that passage on implementation of this legislation put an end to this dispute. For that reason, the provision extinguishing all tribal land claims in Maine must be carefully drafted. We would urge, moreover, that the bill also provide that no Federal money be disbursed under the act—either for the trust fund or for the land acquisition—until the tribes have stipulated to a final judicial dismissal of their claims against these lands. We understand that the tribes have no objection in principle to the inclusion of such a provision, but I do not speak for them here today. Again, as with all other questions I have raised, the administration stands ready to work with all parties to obtain a mutually satisfactory bill. We will report back to you, as I said, on your return on July 21.

Senator COHEN. I have one question, Mr. Secretary, then I am going to yield to my colleague.

Are you not satisfied that section 4 accomplishes that extinguishment of the aboriginal claim? You have raised a question in your final statement that it has to be perfectly clear. I gather, implicitly, that it is not perfectly clear.

Secretary ANDRUS. I would prefer, as we get into the very legal involvement, to have the Solicitor's Office respond to that, in that there is more question than fault there. We just want to make certain that this does, in fact, do what I am confident Congress wants to do, and what we understand all parties would like to do.

Mr. VOLLMANN. We have examined section 4, Senator, and we think the germ of the language that we need to extinguish the land claims is in there, but we see some ambiguities, and I am sure we can work these out in working with the attorneys for the tribes and the State and the committee.

Senator COHEN. Senator Inouye?

Senator INOUYE. When were the lands in question conveyed by the Indian tribes?

Secretary ANDRUS. It was 1794. That was the time that the transaction took place and brought them into violation of the Nonintercourse Act.

Senator INOUYE. Did the State of Massachusetts have jurisdiction at that time?

Secretary ANDRUS. Partially, yes.

Senator INOUYE. The State of Maine was not in existence.

Secretary ANDRUS. No, it was not in existence at that time, but Senator, I am not familiar——

Senator COHEN. Maine became a State in 1820.

Senator INOUYE. According to this measure we have before us, it alleges that the nonintercourse statutes were violated. Who violated the nonintercourse statutes? Was it the State of Massachusetts, the Indian tribes, or the Federal Government?

Secretary ANDRUS. That is a little bit cloudy at this point as to where to place the blame. That is, as to whether it would have been both the Government and the Indians at that time, or whether later governmental entities, by utilizing those lands, and the Federal Government by utilizing some of those lands, were in violation. That is what causes the unique cloudiness of this case. It goes back almost 200 years.

Senator INOUYE. Would you say that the hands of Maine are not all clean?

Secretary ANDRUS. I would have to say that from a layman speaking in a legal sense that their hands are not clean, but I do not think anyone can accuse them of willfully going out to do this with intent to do harm. It was the circumstances of 200 years ago that brought about the unclean hands that you refer to.

Senator INOUYE. Then the truly unclean hands are the Federal hands?

Secretary ANDRUS. I think the Federal hands would have to accept their share of the blame, but I do not recall from memory, Senator, whose responsibility it was to see that those transactions were validated in that day and time. Would it have been the local entities that would have submitted that to the Congress of the United States or would it have been the Congress of the United States responsibility to procure the documents and validate them? I do not know.

Senator INOUYE. I note that the Governor of Maine has insisted that the State of Maine is not guilty of any transgression and, therefore, should not be responsible for any payments. I gather that the payments in this measure will be made by the Federal Government.

What national interest is involved in the passage of this act?

Secretary ANDRUS. No. 1: The Fairness Doctrine—the Indian tribes and nations that have suffered over the years because of this. Also, the trust responsibility that we have by the Constitution and then the statute placing it in that responsibility in the Department of the Interior would be resolved. The citizens of Maine, who sit there in a situation of question over the title of their lands, for actions that they had no part in, should be resolved. The bonding capacity of the areas certainly has a cloud over it. That is why we come before you in

support of a congressional resolution of this problem instead of letting it go on for many, many years additionally into the courts.

Senator. INOUYE. So, it is your contention that the passage of this law will serve the best interests of this country?

Secretary ANDRUS. Yes, sir. It is my view that the congressional resolution would be in the best interests of this country.

Senator INOUYE. Thank you very much.

Senator COHEN. Mr. Secretary, I have several questions I would like to ask you about the role of the Interior Department as a trustee of the Maine Indians' land and the trust fund. To the extent that you cannot answer them this morning, you may supply them for the record before it is closed.

Under section 5(b)(3) of the Federal legislation, the Secretary of the Interior is obliged to disburse income from the principal of the trust fund on a quarterly basis. The use of that income is then expressly freed from regulation by Interior. At the same time, the Federal Government is then forgiven from any liability which might accrue from having made the income available to the tribes. So, I would ask you this. As trustee of the fund, bound by all the duties and obligations which that term implies, do you feel that the provision forgiving the Federal Government from liability adequately protects it?

Secretary ANDRUS. We do not fully understand that provision, Senator. That is one that we have highlighted for clarification.

We would like to discuss it further with the representatives of all involved to see that that is clarified.

Senator COHEN. In a letter to our committee dated June 27, Robert Coulter of the Indian Law Resource Center asserted that, in light of the Supreme Court's decision in *United States* v. *Mitchell*—no reflection upon my colleague—issued on April 15 of this year, the portions of this statute which address the Secretary of the Interior's duties would have to be redrafted. Have you had a chance to look at that particular letter?

Secretary ANDRUS. I did not, personally, but let me defer to Mr. Vollmann.

Mr. VOLLMANN. We have not received that letter, Senator. In the *United States* v. *Mitchell* case, it involved a claim under the General Allotment Act against the United States for claiming that the United States was liable for mismanagement of trust lands. The U.S. Supreme Court held that the United States was not liable for mismanagement of forest lands. I do not see the application to this at all.

Senator COHEN. I will see that you get a copy of the letter, and perhaps you can respond at a later time.

Without objection, the record will remain open at this point for the purpose of inserting this additional information.

[The letters follow:]

Senator MITCHELL. I understand the language may be changed. I anticipate that so long as there is any question about that point there will be some valid reservation on the part of some Members of Congress of proceeding, and it seems to me that that being the fundamental purpose of the legislation it is important to nail that down with finality.

Senator Cohen in his questioning referred to section 5(e)(2) dealing with the alienation of lands. I note in reviewing that section that there is a provision against alienation as it affects the lands of the Passamaquoddy Tribe of the Penobscot Nation.

I have received some inquiries from some persons who are concerned about the treatment of the Maliseet Band and specifically, a suggestion has been made that the failure to include the Maliseet Band in this provision against alienation may result in the dispersal of that land.

Have you received the legislation with that question in mind, and are you satisfied that this is an appropriate resolution of that point?

Secretary ANDRUS. No, Senator. We have not resolved that question. I prefer to submit it for the record, if we might, because that is a question that has recently been raised.

Senator COHEN. Without objection, the record will remain open for the purpose of inserting the additional information requested by Senator Mitchell upon receipt.

[The material follows. Testimony resumes on p. 128.]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

AUG 8 1980

Honorable John Melcher
Chairman, Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 2829, a bill "To provide for the settlement of land claims of Indians, Indian nations and tribes and bands of Indians in the State of Maine, including the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians, and for other purposes."

We view the settlement of the Indian land claims in the State of Maine as one of the most important issues in Indian affairs facing Congress today. After three and one-half years of effort a legislative settlement proposal is before the Congress, one which is supported by the State, the Tribes, and the major landowners in the State, and which has already received the endorsement of the State Legislature. That proposal is predicated upon the authorization of the appropriation by Congress of $81.5 million to carry out its provisions.

At the July 1, 1980 hearing before the Committee on S. 2829, we stated that because years of continued litigation would have a severe impact on the people of Maine — both Indian and non-Indian — we do not object to the Federal contribution contemplated by the bill. However, we also raised a series of questions regarding a number of the provisions of the bill, especially insofar as it provides for the role of the Federal Government as trustee for the Maine Tribes. Since then we have met on several occasions with officials of the State and Tribes, and we fully appreciate the efforts the parties have made to achieve agreement on many of the important provisions of S. 2829. We have worked with those officials to redraft a number of those provisions and have achieved a large measure of agreement on substitute language to clarify the governmental responsibilities and jurisdictional relationships among the parties. It has not been our intent to alter in any way the agreement between the State of Maine and the Passamaquoddy Tribe and Penobscot Nation with respect to their new relationship. We have only sought to assist in making that agreement completely workable.

We have enclosed a proposed amendment to S. 2829 in the nature of a substitute, which we believe would clarify the provisions of the bill while adhering closely to the intent and substance of it. We discuss below the more significant changes which our proposal would make in the language of S. 2829 as introduced. Discussion among the parties has not yet been concluded with respect to one provision of the bill, Section 6(b). We have therefore noted in the proposed amendment that the language of that section is to be supplied. We anticipate concluding the discussion of that provision shortly and will report to the Committee on proposed language for it as soon as possible.

We have provided in Section 3(2) of our proposed amendment for a definition of "Indian territory", primarily to aid in a reading of revised Section 5(d) which has been redrafted to clarify how title to lands acquired pursuant to the terms of the Act shall be held. The definition of "Indian territory" tracks the definitions of "Passamaquoddy Indian Territory" and "Penobscot Indian Territory" contained in the Maine Implementing Act, and is not intended to be inconsistent with the use of those terms. It is important to note that the jurisdictional character of the lands described in Section 3(2)(C) will not be altered unless they are actually acquired by the United States in trust for the Passamaquoddy Tribe or the Penobscot Nation pursuant to Section 5(d). We also note that "Indian territory" has been defined in a manner which permits the parties to vary the boundaries of this area later by mutual agreement.

One important concern arises in connection with these definitions. Lands may only be included within Passamaquoddy or Penobscot Indian Territory under Section 6205 of the Maine Implementing Act if they are acquired by the United States on or before January 1, 1983. Designation of lands as Indian territory is critical because only lands so designated will be held in trust by the United States, subject to Federal restrictions against alienation, and within the limited governmental authority of those Tribes. Lands acquired outside Indian territory, which cannot be so held, are much less likely to provide a lasting land base for the Tribes. The date chosen appears to have been based on the assumption that land acquisition would begin early in 1981, thus giving the Secretary and the Tribes nearly two years within which to acquire lands within Indian territory. It now appears that however quickly S. 2829 is enacted, it may be difficult to acquire the contemplated acreage within the time limit.

Initially, we recommended to State officials that the Maine Implementing Act be amended to address this concern by providing for a more realistic date for cutting off the creation of Indian territory. They responded that such a concern is premature, and that the Legislature would therefore be unwilling to amend the Act at this time. Nevertheless, we have been assured by State Attorney General Richard S. Cohen that if the appropriation of the necessary sums is delayed so that the contemplated land acquisition could not be effected by January 1, 1983, he would personally be willing to recommend to the State Legislature that the Implementing Act be amended to provide for an adequate extension of time. At any rate, we note that Congress has plenary power to remedy this concern if land acquisition is delayed for reasons beyond the control of the Tribes, and the State Legislature does not provide for an extension of the time limit. The Administration will seek an appropriation of $81.5 million in fiscal year 1981, upon enactment of an appropriate settlement.

The most important provision in S. 2829 is clearly Section 4, which provides for the final extinguishment of all Indian land claims in the State of Maine. We have revised Section 4(a)(1) of S. 2829 only to add a proviso which would make it clear that nothing in the section should be construed to affect an ordinary land title claim of an individual Indian within the State. Without the proviso the section, read literally, would extinguish the title claim of an Indian homeowner in the State whose claim is based on a Federal law generally designed to protect non-Indians as well as Indians, such as laws governing Federal home loans.

The effect of this provision of S. 2829 would be that all Indian land claims in Maine arising under Federal law will be extinguished on the date of the enactment of the Act. However, the Tribes have expressed the concern that there is no guarantee that they will receive the consideration authorized in the bill for their agreement to give up their claims. They have therefore advocated that the bill be amended to condition extinguishment of the claims under Section 4 on the appropriation of $81.5 million by Congress. Another Indian land claim settlement bill in this Congress, H.R. 6631 concerning the Cayuga land claim in New York State, was amended by the House Interior and Insular Affairs Committee to provide for such a conditional amendment. The State of Maine, on the other hand, desires immediate extinguishment of the land claims in order to clear titles in the State as soon as possible. State officials note that the aboriginal title claims of Alaska Natives were extinguished on the date of enactment of the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.). We think it is clear that Congress does have plenary power to extinguish claims of aboriginal Indian title. Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955). Nevertheless, we appreciate the Tribes' concern, and we would therefore not be opposed to an amendment which would condition extinguishment on the making of the necessary appropriations. We wish to note, however, that under Public Law 96-217 the statute of limitations at 28 U.S.C. § 2415 is now due to run on December 31, 1982. Thus, a delay in appropriations beyond that date may force the Tribes to file protective lawsuits.

Sections 4(a)(2) and (3) of S. 2829 would extinguish claims of Indian title arising under State law. We think this is an inappropriate subject for Federal legislation, and indeed, the identical provisions appear in Section 6213 of the State Implementing Act. Nevertheless, we have agreed to include in our proposed amendment language in lieu of those two paragraphs which would bar the United States from asserting as trustee for the Indians past land claims arising under State law. Because of the importance of the language finally extinguishing Indian land claims within the State, and in response to a specific request made at the July 1 hearing, we will be providing the Committee with an opinion of our Solicitor on the effectiveness of the extinguishment language of Section 4 of our proposed amendment.

Section 5(a) of S. 2829 would establish a $27 million settlement trust fund for the benefit of the Passamaquoddy Tribe and the Penobscot Nation. We have revised Section 5(b) of S. 2829 to clarify the role of the Secretary as the trustee charged with the responsibility of administering this fund. The two Tribes and the Administration agreed in February 1978 that any such trust fund should be administered in accordance with an agreement between the Secretary and each Tribe. The Tribes desire the opportunity for a more liberal investment policy than has historically been authorized for tribal trust funds under the Act of June 24, 1938 (25 U.S.C. § 162a). We respect that desire and are willing to permit future investment of the trust fund to be carried out pursuant to an agreement between the Secretary and each Tribe, but we are concerned that the language of Section 5(b)(1) of S. 2829 does not adequately protect the United States from unwarranted liability. The provision contains the requirement that the Secretary must agree to "reasonable terms" for investment within 30 days of submission of proposed terms by the Tribe. We believe that this is a difficult standard and an unworkable procedure. In our proposed amendment, we adopt an approach suggested in the 1977 Final Report of the American Indian Policy Review Commission. Under that approach trust funds could be utilized by Tribes for potentially more profitable investments, but only after the Tribes specifically release the United States from liability in the event the chosen investment results in a loss.

A proviso in Section 5(b)(3) of S. 2829 would require each Tribe to expend annually the income from $1 million of its portion of the Settlement Fund for the benefit of tribal members over the age of 60. We understand that this was an important factor in discussions of the proposed settlement between the tribal negotiating committees and the memberships of the Tribes, and we applaud their desire to provide special assistance to the Tribes' senior members. However, we questioned whether such a provision should appear in the bill since the Secretary has no responsibility under the bill for any distribution of trust fund income, a point which has been agreed upon among all the parties. Tribal officials have assured us that it is the Tribes alone, not the Secretary, who will be responsible for the expenditure of trust fund income for the benefit of tribal members over 60. In light of that understanding, we do not object to the provision remaining in the bill.

Section 5(c) of S. 2829 would establish a $54.5 million Land Acquisition Fund. The Tribes had insisted upon the acquisition of 300,000 acres of average quality Maine woodland as the integral term of the settlement of their land claims. Our appraisers have determined that $54.5 million is sufficient to acquire such woodland, but we believe the legislation should not be tied to any given acreage figure, since woodland of varying quality may become available in the marketplace at any given time.

Our proposed amendment would reword Section 5(d) to clarify that the title to lands acquired in Indian territory shall be held by the United States in trust for the Passamaquoddy Tribe or Penobscot Nation. Lands acquired for the Tribe or Nation outside Indian territory shall be held in fee simple by the respective Tribe or Nation. Our proposed Section 5(d) also contains an authorization for the Secretary to take lands within Indian territory in trust after they have been independently acquired by the Passamaquoddy Tribe or Penobscot Nation. This is necessary because the Tribes contemplate the acquisition of lands outside Indian territory which would later be used for exchange purposes once additional lands within Indian territory go on sale.

The title to lands acquired for the benefit of the Houlton Band of Maliseet Indians is also addressed by this subsection. The Band desires to acquire lands in eastern Aroostook County which would be held in trust for them by the United States. Officials of the State of Maine, however, initially objected to the acquisition of lands in trust status outside the boundaries of Passamaquoddy Indian Territory or Penobscot Indian Territory. We have sought to accommodate both their concerns by redrafting the subsection to authorize the Secretary to acquire lands in trust for the Houlton Band, but only after obtaining the concurrence of authorized State officials to the acquisition. We have provided further that the Houlton Band would be authorized to enter into contracts with appropriate government agencies for the provision of services, similar to those we recommend below with respect to the Passamaquoddy Tribe and the Penobscot Nation. We expect that State and Band officials will work together in good faith to identify suitable lands for the Houlton Band.

The revised subsection also provides that notwithstanding the provisions of the Act of August 1, 1888, and the Act of February 26, 1931 (40 U.S.C. §§ 257, 258a), the Secretary may acquire land under this section only if the Secretary and the owner of the land have agreed upon the identity of the land to be sold and upon the purchase price and other terms of sale. The cited provisions allow Federal agencies to utilize condemnation procedures and declarations of taking to acquire land for Federal purposes. Our proposed Section 5(d) would not bar the use of such procedures, but would only require the consent of the landowner to the terms of the taking. This limitation was requested by the landowners who intend to sell lands to the Tribes, and we have no objection to it.

Section 5(e) of our proposed amendment is new. At the July 1 hearing we expressed the view that no Federal money should be paid to the Tribes — either for the trust fund or for land acquisition — until they each have stipulated to a final dismissal of their claims. This subsection would condition the Secretary's authority to expend the two trust funds for the benefit of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians on a finding that authorized officials of each of the Tribes have executed documents relinquishing all their claims and have stipulated to

a final judicial dismissal of their claims. Such relinquishments and dismissals will insure that there can be no future claim against the United States for the extinguishment of the Indian claims effected by this legislative settlement.

Our proposed subsection (f) of Section 5 is a clarification of Section 5(e) of S. 2829. Subsection (f) provides that the Indian Nonintercourse Act (25 U.S.C. § 177) shall not be applicable in Maine, but that lands in Indian territory or held in trust for the Houlton Band of Maliseet Indians shall nevertheless be subject to restrictions against alienation. Paragraph (3) provides specific, though limited, authorizations for the alienation of such trust lands. These are consistent with the terms of the proviso to Section 5(e)(2) of S. 2829, except that a specific authorization for rights-of-way, with the consent of the affected Tribe, Nation, or Band, has been added to provide for rights-of-way without resort to condemnation. The authorization for exchanges in proposed Section 5(f)(3)(E) has been made more flexible by inserting language taken from Section 206(b) of the Federal Land Policy and Management Act (43 U.S.C. § 1716). Without such flexibility such an exchange authority may prove useless because it is often difficult to find exchange lands of precisely equal value. Finally, the authorization in S. 2829 for transfers of land the proceeds of which must be reinvested within two years has been revised in proposed Section 5(f)(3)(F) to reflect the Tribes' intent that sales be authorized only if the Secretary has already made specific arrangements for the acquisition of replacement land.

Section 5(f) of S. 2829 would require the Secretary to agree within 30 days to "reasonable terms" for the management and administration of land held in trust for the Passamaquoddy Tribe and Penobscot Nation. We believe the procedures outlined in this subsection are unwieldy but, more importantly, existing Federal laws and regulations provide adequate authority for the Tribes to manage their own trust lands. We have therefore rewritten the provision, which appears as Section 5(g) of our proposed amendment, to restate existing law which would authorize the Secretary to enter into land management agreements with either Tribe in accordance with Section 102 of the Indian Self-Determination Act (25 U.S.C. § 450f). We note that the contract declination procedures of that Act and existing regulations would be applicable to such agreements.

In our proposed amendment we have added a new subsection (h) to provide for condemnation of Passamaquoddy, Penobscot, and Houlton Band lands in accordance with state law relating to such lands. This subsection is necessary because Indian trust or restricted lands may not be condemned under state law without Congressional authorization. Congressional authorizations have generally required that the condemnation be in Federal court and that the United States be a party. We believe it would be unwise to diverge from this practice. Subsection (h) also specifies the disposition of the compensation received.

The disposition specified differs slightly from Section 5(g) of S. 2829 in that it channels proceeds through the Land Acquisition Fund rather than requiring their reinvestment within two years. Since it is the Tribes who initiate land purchases under the scheme of the bill and since sums in the Land Acquisition Fund may only be used for that purpose, the two year requirement is superfluous and confusing. Subsection (i) provides that the proceeds from the condemnation of trust or restricted Indian lands in Maine pursuant to any law of the United States other than this Act shall likewise be reinvested through the Land Acquisition Fund.

Section 6(a) of S. 2829, and as revised in our proposed amendment, is intended to effectuate the broad assumption of jurisdiction over Indian lands by the State of Maine. As noted above, we will be reporting to the Committee on Section 6(b) as soon as discussion on it is concluded.

Our proposed amendment contains a new Section 6(c) to make absolutely clear the intention of the parties that the Federal government will not have "Indian country" type law enforcement jurisdiction on Indian lands in the State of Maine. See State v. Dana, 404 A.2d 551 (Me. 1979) cert. denied 48 U.S.L.W. 3537 (February 19, 1980). Our proposed Section 6(d) is merely a restatement and clarification of the first sentence and proviso of Section 6(c) of S. 2829. No substantive change is intended, except to clarify that the parties have agreed that the jurisdictional provisions of Section 1362 of Title 28, United States Code, shall apply to the three Tribes, notwithstanding the otherwise broad language of the provision.

At the July 1 hearing we had objected to the second part of Section 6(c) of S. 2829, which would permit suits against the Secretary by judgment creditors of the Passamaquoddy Tribe and Penobscot Nation to force payment of the judgments out of Settlement Fund income. Our concern was that such litigation would be burdensome and unnecessary. Our proposed Section 6(d)(2) would provide instead a procedure for administrative attachment of future trust fund income by judgment creditors of the two Tribes. Under that provision the Secretary would be required to honor valid court orders of money judgments against either Tribe from causes of action accruing after the date of the enactment of the bill, by making an assignment to the judgment creditor of the right to receive future income from the Settlement Fund, notwithstanding the provisions of the Anti-Assignment Act (31 U.S.C. § 203).

Under Section 6(d) of S. 2829 Congress would consent in advance to any amendment of the Maine Implementing Act as long as the Tribes agreed to any such amendment. The breadth of this "consent" gave us cause for concern. We have

therefore included in our proposed Section 6(e)(1), language taken from S. 1181 (96th Cong.) which would authorize future jurisdictional agreements between the State and either the Passamaquoddy Tribe or the Penobscot Nation in the form of amendments to the Implementing Act. State and tribal officials have agreed to this provision. Our proposed Section 6(e)(2) would authorize similar agreements with the Houlton Band of Maliseet Indians.

Section 6(f) of our proposed amendment is identical to Section 6(e) of S. 2829. It authorizes the Passamaquoddy Tribe and Penobscot Nation to exercise jurisdiction, separate and distinct from that of Maine, to the extent authorized by the Maine Implementing Act. That Act in turn leaves the two Tribes with exclusive authority over their own internal tribal affairs, certain misdemeanor jurisdiction over tribal members, small claims jurisdiction, and a significant residuum of regulatory authority over their own lands. The two Tribes will also be treated as municipalities under State law for purposes of jurisdiction over their lands in Indian territory, which means that no other municipality, the main unit of local government in Maine, may exercise any authority over tribal affairs in those areas. Lands and personal property in Indian territory may not be taxed; nor may income from the Settlement Fund. The Tribes and their members shall for the most part be otherwise subject to State taxes.

We note that Section 6208(2) of the Maine Implementing Act would require the Passamaquoddy Tribe and the Penobscot Nation to make payments in lieu of taxes for trust lands within Indian territory. As we pointed out at the July 1 hearing, we prefer that, instead of making in-lieu payments, the Tribes merely negotiate contracts with the counties and other districts for the provision of services. Nevertheless, this is a matter for tribal discretion, and Section 6(e) of our proposed amendment would allow for future jurisdictional agreements to accommodate our preference.

At the July 1 hearing we objected to the full faith and credit provision of Section 6(f) of S. 2829. In lieu of that provision the Tribes and State have offered language which appears in our proposed Section 6(g). It states that the Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other. The parties could agree to this form of comity without the consent of Congress, but we have no objection to its inclusion in the settlement legislation. There is, of course, no reason why the Tribes may not establish similar comity with other jurisdictions.

Section 6(g) of S. 2829 provides that Federal laws of general applicability to Indians, Indian tribes, and Indian lands shall not be applicable in Maine,

except that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians shall be eligible for all financial benefits for which all other Federally recognized Indian tribes are eligible. We found this provision troublesome and confusing in that Federal financial benefits to Indian tribes would be divorced from general Federal statutes applicable to Indians. This was a subject of some discussion with representatives of the State and Tribes, and agreement was reached on the language of our proposed Section 6(h). In short, this would provide that no Federal law or regulation (1) which accords or relates to a special status or right of or to any Indian, Indian nation, tribe or band of Indians, Indian lands, Indian reservations, Indian country, Indian territory, or land held in trust for Indians, and also (2) which affects or preempts the civil, criminal, or regulatory jurisdiction or laws of the State of Maine, shall apply within the State. This limitation would include such Federal laws, among others, as the Indian trader statutes (25 U.S.C. §§ 261-264) and the provision of the Clean Air Act Amendments of 1977 which permits Indian tribes to designate air quality standards (42 U.S.C. § 7474).

Section 6(g) of S. 2829 also states that the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians are Federally-recognized Indian tribes and that they shall be eligible for Federal financial programs on the same basis as all other Federally-recognized Tribes. Since the bill contemplates significant acquisition of lands to be held in trust for the Tribes, we read this provision to mean that such trust lands should be treated as Indian reservations for purposes of the provision of Federal Indian services. We do not object to the provision, so interpreted.

We have also included a proviso to this subsection which would limit the membership of the Houlton Band of Maliseet Indians, for purposes of the provision of Federal services or benefits, to persons who are citizens of the United States. This is similar to the limitation in Section 3 of Public Law 95-375 which recognized the Pascua Yaqui Tribe for purposes of the provision of Federal Indian services.

With the agreement of the parties we have included in our proposed amendment a new Section 7, which would clearly permit the Tribes to organize for their common welfare and adopt constitutions or charters. While we have been assured by attorneys for the State of Maine that the Passamaquoddy Tribe and the Penobscot Nation need not adopt charters under State law to avail themselves of the benefits of the status of municipalities of the State, we believe it preferable to make clear that this option continues to exist under Federal law. And, since these Tribes will be administering large land holdings and valuable assets, the adoption of organic governing documents, which would be filed with the Secretary, seems advisable.

Our proposed Section 8(f) would make Section 102 of the Indian Child Welfare Act of 1978 (25 U.S.C. § 1912) applicable to the Houlton Band of Maliseet Indians. Officials of the State of Maine consented to this provision and we have no objection to it.

Section 8(b) of S. 2829 provides that the eligibility for or receipt of payments from the State of Maine by the Passamaquoddy Tribe and the Penobscot Nation pursuant to the Maine Implementing Act shall not be considered by Federal agencies in determining the eligibility of either Tribe for Federal financial aid programs. To clarify this provision, which appears as Section 9(b) of our proposed amendment, we have added a proviso to the effect that Federal agencies shall not be barred by this section from considering the actual financial situation of the Tribe.

Section 8(c) of S. 2829 would prevent Federal agencies from considering the availability or distribution of funds pursuant to Section 5 of the bill for purposes of denying Federal financial assistance to Indian households or to the Passamaquoddy Tribe or Penobscot Nation. We read this provision to refer only to income from the Settlement Fund to be established pursuant to Section 5(a), and expect that the two Tribes will otherwise be treated as any other tribe insofar as their income from other sources are concerned, including income derived from land or natural resources acquired pursuant to the Act. As read, the provision is unobjectionable. It appears as Section 9(c) of our proposed amendment.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Cecil D. Andrus

SECRETARY

Enclosure

Amendment to S. 2829 in the

Nature of a Substitute

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Maine Indian Claims Settlement Act of 1980".

CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY

Sec. 2. (a) Congress hereby finds and declares that:

(1) The Passamaquoddy Tribe, the Penobscot Nation, and the Maliseet Tribe are asserting claims for possession of lands within the State of Maine and for damages on the grounds that the lands in question were originally transferred in violation of law, including the Trade and Intercourse Act of 1790 (1 Stat. 137), or subsequent reenactments or versions thereof.

(2) The Indians, Indian nations, and tribes and bands of Indians, other than the Passamaquoddy Tribe, the Penobscot Nation and the Houlton Band of Maliseet Indians, that once may have held aboriginal title to lands within the State of Maine long ago abandoned their aboriginal holdings.

(3) The Penobscot Nation, as represented as of the time of passage of this Act by the Penobscot Nation's Governor and Council, is the sole successor in interest to the aboriginal entity generally known as the Penobscot Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

Senator COHEN. On section 6(d): This appears to be an attempt to authorize action by the State on changes in the Federal laws, and it assumes congressional adoption of those changes.

No. 1: It seems to me the provision is unique because it allows the Federal act in the U.S. interests, regarding the settlement to be amended by the State. The question is this: Should a Federal act ratify an ambiguous State act in a blanket manner?

Secretary ANDRUS. We object to that language, Senator. In our discussions we have found that the State representatives and the tribal representatives did not believe that that language would give congressional consent to future amendments by the State. So, I think that is one that can easily be worked out. But we object to that language in 6(d) which would give that—we think would give that congressional consent.

Senator MITCHELL. I have one more question. One of the concerns raised about this legislation, both in Maine and here in the Congress, is the difficulty of getting Congress to approve the expenditure of $81 million at a time of tight budgetary restraints. Should that present a problem, I would ask you a question in two parts.

First: What is the possibility of spreading out the payments, particularly with respect to the acquisition of land, over a period of years.

Second: Would that be reconcilable with the extinguishment of the claims, or would that complicate that aspect of the matter?

Secretary ANDRUS. Senator, I think it is possible. Obviously all 300,000 acres of land have not been located with an X on the map, but I cannot speak for the tribes' representatives. I am confident they will be here today and tomorrow to speak for themselves in this regard. It would not cause the Government any problem over that period of time. However, in other legislation—in the Alaska Native Claims Settlement Act it was spread out over a period of years. We do not see a problem with it.

However, I think that question would appropriately be addressed also to the two tribes.

Senator MITCHELL. From the Department's point of view, you think that presents no problem.

Secretary ANDRUS. No, sir.

Senator MITCHELL. If that were an attractive alternative to the Congress, from the Department's point of view, that would not be a difficulty?

Secretary ANDRUS. That would be no problem. As a matter of fact, I would suspect that the administration and Congress would find that an easier way to handle the situation.

Senator COHEN. Mr. Secretary, thank you for your testimony. We look forward to receiving your recommendations to the committee when Congress returns later in July.

[The prepared statement follows. Oral testimony resumes on p. 136.]

PREPARED STATEMENT OF CECIL D. ANDRUS, SECRETARY OF THE INTERIOR

Mr. Chairman, and members of the Committee, I am here to discuss with you today the Administration's views on S. 2829, the Maine Indian Claims Settlement Act of 1980.

We fully support the concept of a negotiated settlement as the means for resolution of the Maine Indian land claims, and we hope that S. 2829 will lead to a final settlement of these claims.

We recognize that a Federal contribution is necessary to achieve a negotiated settlement, and we do not object to the contribution proposed by this bill. The proposed contribution of $81.5 million is substantially higher than the Administration has previously supported. However, because years of continued litigation would have a severe impact on the citizens of Maine—and also because the settlement proposal is based on the agreement of all relevant parties in Maine and should therefore provide a lasting solution to this problem—we do not object to the Congress providing for the Federal contribution contemplated in S. 2829.

It would not be responsible for the Administration simply to state its general position on this legislation. For that reason, we have carefully examined all aspects of the proposal in order to ensure that the broad interests of the tribes and the United States are well served under it.

Our examination has produced a series of questions concerning details of S. 2829 which we would like to raise to the Committee for your consideration as you examine this legislation. We look forward to working with the Congress, the State of Maine, and the tribes to resolve these question in a mutually satisfactory manner.

Before I discuss our questions about S. 2829 in more detail, let me summarize for you the 8-year history of the Department's involvement with the Maine land claims. In 1972, the Passamaquoddy Tribe of Maine petitioned the Department of the Interior for a recommendation that the Department of Justice file suit on the tribe's behalf to remedy a 1794 violation of the Indian Nonintercourse Act of 1790. However, the Department of the Interior took the position that the Nonintercourse Act was not applicable to the Passamaquoddy Tribe because it was not a "recognized tribe," and that the Department therefore did not owe that tribe any trust responsibility. In anticipation of the running of a statute of limitations applicable to monetary trespass claims, the tribe filed suit to seek a declaration that the Nonintercourse Act did apply, and that the Federal Government therefore did have a trust responsibility to the tribe in the assertion of its claims. The statute of limitations was extended by Congress, but the lawsuit continued. In January 1975 the U.S. District Court ruled in the tribe's favor and was upheld by the U.S. Court of Appeals. Neither the United States nor the State, which had intervened in this litigation, appealed to the U.S. Supreme Court, and the court order became final in March 1976. An investigation then began into the merits of the claims of the Passamaquoddy Tribe and the similar claims of the Penobscot Indian Nation.

In late February 1977 the United States reported to the District Court that the tribes had significant claims to five million acres of Maine woodland. However, the Department of Justice also informed the court that it was the position of the Federal Government that such claims are best settled by Congress rather than through years of litigation, and that the President was about to appoint a special representative to work toward this end. In March of that year President Carter appointed Judge William B. Gunter, a retired Justice of the Georgia Supreme Court, to be that representative. In July 1977 Judge Gunter gave the President his recommendation that the claims be settled by providing the tribes with a $25 million trust fund and 100,000 acres of land. Both the tribes and State rejected that recommendation, but it proved to be a point of departure for the negotiations.

In February 1978, a White House Work Group made up of Interior Solicitor Leo Krulitz, OMB Associate Director Eliot R. Cutler, and Mr. A. Stephens Clay, an associate of Judge Gunter, arrived at an agreement with the tribes to provide for a partial settlement of the claim. Under this proposal the tribes would receive a $25 million trust fund and in return would relinquish their claims to any land holdings of 50,000 or fewer acres held by any private landowner in the claims area. The larger landowners and the State were opposed to this partial settlement proposal, and legislation was never introduced to effectuate it. Nevertheless, negotiations did progress. At the same time as the partial settlement proposal was announced the tribes also announced that they would settle the rest of their claims for 300,000 acres of average Maine woodland.

In October 1978 then Senator Hathaway announced a new settlement proposal which the State and the Administration agreed to. It called for a $27 million trust fund plus a $10 million land acquisition fund to enable the tribes to acquire 100,000 acres of woodland. The State contribution to this was set at $5 million, but it was understood that the State would be credited for that amount for the past provision of services to the tribes and their members during those many years when the Federal Government provided no such services. This proposal still did not gain universal acceptance. In March 1979 the tribes voted to settle for no less than

300,000 acres of woodland as previously announced. Negotiations continued, and attempts were made to seek sources of funding to acquire the acreage the tribes deemed necessary. Meanwhile, the tribes and the State tried to achieve an agreement on what jurisdictional relationship would exist among the tribes, State, and the Federal Government over any new acquired lands. These separate negotiations took on added meaning after the Maine Supreme Court ruled in May 1979 that the existing reservations in Maine constituted "Indian country" within the meaning of title 18 of the U.S. Code, and that the Federal Government therefore had jurisdiction over offenses by and against Indians on those reservations.

In November 1979 representatives of the various parties met at the Department of the Interior to discuss what further steps shoud be taken toward a legislative settlement. It was agreed that the attorneys for the tribes, State, and the landowners would review draft legislation prepared in the Department and would return with their alternate drafts in the coming weeks. We saw nothing further until March of this year when it was announced that the parties in Maine had agreed upon an $81.5 million settlement funded by the United States and a jurisdictional agreement on authority over any lands to be acquired with that money. As you know, that settlement proposal took the form of two pieces of legislation, one State and one Federal. The State legislation was enacted and signed into law by Governor Brennan on April 3, 1980, with little opportunity for the Executive branch of the Federal Government to review and comment on it. That legislation could, if ratified by Congress, have a significant effect on the role of this Department as trustee for the Maine tribes.

We are encouraged that the tribes and the State have been able to work out an agreement. However, we have a number of questions about the role of the Department in connection with that agreed-upon relationship and believe that a number of points need revision or clarification. We plan to work with the tribes, the State, and the Congress to make this agreement a clear and acceptable one.

S. 2829 would ratify an Act enacted by the State of Maine to implement a settlement of the Maine Indian land claims—the "Maine Implementing Act." This Act would define respective State and tribal jurisdiction. It would declare that the Houlton Band of Maliseet Indians shall be subject to the laws of the State and that, except as expressly provided, all land owned by Indians, Indian nations, tribes, or bands, or by the United States in trust for them, shall be subject to State law and to both civil and criminal jurisdiction of State courts. Exceptions to such jurisdiction would include internal tribal matters and use of settlement fund income, certain tribal ordinances concerning hunting and fishing, and jurisdiction over minor crimes by Indians, Indian child custody proceedings, and domestic relations matters of tribal members. In addition, the Passamaquoddy Tribe and the Penobscot Nation would gain a status similar to that of municipalities and waive sovereign immunity with respect to actions in any capacity other than a governmental one.

The two tribes would make payments in lieu of taxes on real and personal property and be liable for all other taxes and fees generally applicable in the State. The Act becomes effective only upon enactment of Federal legislation extinguishing the aboriginal land claims and "ratifying and approving this Act without modifications."

In addition to ratifying the State Act, S. 2829 would find that the Houlton Band of Maliseet Indians is the successor in interest to lands within the United States of the aboriginal Maliseet Tribe and would deem the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseets to be Federally recognized Indian tribes eligible to receive financial benefits that the United States provides to Indian tribes. Other laws according special status or rights to Indians or Indian trust lands would not apply within the State of Maine.

The bill would also approve and ratify past transfers of land by these three tribes within Maine and the United States, and extinguish all aboriginal title and any claims arising out of such transfers in Maine. A $27 million settlement trust fund would be established for the Passamaquoddy and Penobscot with the income to be paid to the tribes quarterly and to be free from Federal control. A $54.5 million land acquisition fund would be established, with $900,000 allocated for purchase of 5,000 acres for the Houlton Band and one half of the remainder to each of the other two tribes.

Funds received by the tribes would not be considered for purposes of future Federal payments or grants to either the State or to individual Indians. Funds obtained by the tribes from the State as a municipality would not be considered in determining eligibility of or computing payments to the tribes under Federal

financial aid programs. Transfers of privately owned land to the United States paid for out of the land acquisition fund would be considered to be involuntary conversions for Federal tax purposes, permitting a deferral of capital gains tax.

Again, while we are pleased that the tribes, the State, and the landowners have achieved agreement on many difficult issues, we believe that S. 2829 raises two major issues on which further discussion is needed—(1) the total level of funding, and (2) the intergovernmental relationship among the tribes, the State, and the Federal government.

With respect to the issue of Federal funding of the proposed settlement, we support the allocation of $27 million to a trust fund for the tribes. We also do not oppose the allocation of no more than $54.5 million for a land acquisition fund to purchase 300,000 acres of average Maine woodland. Based upon an assessment recently completed by the Department, this amount of money is sufficient to purchase this acreage.

S. 2829 has, in addition, financial implications beyond these outright payments which we believe would be unwarranted. As drafted, section 8(a) of the bill would prevent Federal agencies from considering any payments made for the benefit of the tribes pursuant to the settlement in determining State eligibility for participation in Federal financial aid programs.

Together with sections 6211(2) and (4) of the State Act, section 8(a) would apparently allow payments by State agencies to Indians to be subplanted by Federal payments for the same or similar purposes. If, for example, the State withdrew all health care funding for its Indian citizens in anticipation of Indian Health Services (IHS) aid, the incremental cost to the IHS is estimated at about $1 million annually. If this provision were to establish a nationwide precedent, the cost would rise to $285 million annually in this single program. Federal funding in Maine could under this reading also supplant State funds in other programs, such as public school assistance under the Johnson-O'Malley Act, which indicates a clear Congressional intent to prevent States from supplanting their funds with Federal dollars.

We recognize that the State has long maintained a relationship with the Passamaquoddy and Penobscot, providing at significant cost educational, comprehensive health, welfare, police, fire, and housing services and, in applying our guidelines calling for State participation in any proposed Indian land claims settlement, we consider the cost of those services to be the equivalent of the land contributed by the State of Rhode Island in the Narragansett settlement and of that to be contributed by New York in the proposed Cayuga settlement. However, the special treatment that the State of Maine would appear to be accorded under section 8 of S. 2829 is totally unjustified.

In effect the provision of governmental services to reservation Indians in Maine would be treated as an almost exclusively Federal responsibility. Every time the Federal Government expended a dollar for services on the reservation, that dollar would supplant a dollar of services provided under State law, services to which all Maine citizens and municipalities would otherwise be entitled. Thus, under this provision many Federal programs to aid the Passamaquoddy and Penobscot would in reality merely allow the State of Maine to withdraw similar programs to those tribes and their members—without Federal agencies being able to reduce their funding for the State government to take into account this new Federal responsibility. We also feel that it is inappropriate to disregard payments (other than those directly under the settlement agreement) in determining tribal or individual Indian eligibility for various forms of Federal assistance. This provision in section 8(b) could apply to any State payment, including, for example, retirement benefits for Indian State employees. We are, therefore, opposed to the present language of section 8 and sections 6211 (2) and (4) of the State Implementing Act, and we will work with tribal representatives and State officials to draft language to eliminate the possibility of funding inequities that may otherwise result under the settlement proposal. We were informed that it was not the intent of the State or the tribe to create this situation and we believe that clarifying language can be worked out.

An additional cost to the United States would result from enactment of section 9 of S. 2829, which would expand Federal tax law to treat the sale of private land to the tribes under the settlement as an involuntary conversion subject to capital gains deferral. The Federal tax loss from this provision is estimated at $15 million. We question the desirability of establishing such a precedent because existing Federal law treats only sales stemming from Federal or State condemnations as

involuntary conversions. Nevertheless, in light of the parties' agreement to this provision, we defer to Congress on the wisdom of adopting it.

Our second major question with S. 2829 is with respect to the novel jurisdictional relationships which would be created by the bill and the State Implementing Act. Our foremost concern in this regard is the lack of clarity in defining the role of the Federal Government as trustee to the tribes.

Let me make it clear that we do not regard the State-tribal agreement as one calling for termination of these tribes. As we read the State legislation and S. 2829, the tribes' governmental authority over their own members will continue to be recognized. The Passamaquoddy Tribe and the Penobscot Nation will, as we read the legislation, not be entities created and wholly subject to State laws beyond their control, but will continue to be Indian tribal entities subject to the ultimate authority of Congress under the Commerce Clause of the Constitution, subject to certain restrictions on their authority as a result of this jurisdictional compact with the State of Maine.

Section 5(d) of S. 2829 authorizes the Secretary to expend the land acquisition fund established under the bill for the purpose of acquiring land for the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band. There is, however, nothing in the bill that states how the land is to be held after purchase, whether in trust by the United States for the benefit of the tribes, by the tribes in fee subject to certain restrictions on alienation, or otherwise. This situation must be clarified, especially with respect to lands that will be subject to real property taxation and tax forfeiture sales.

Section 5(e) of the bill, which deals with restrictions on alienation of trust lands, would differ to some degree from present Federal law. The bill and State Implementing Act distinguish between lands within and without "Indian territory," an area which includes the tribes' current reservations plus up to 300,000 acres of land acquired in certain unorganized townships in rural Maine. This distinction is somewhat similar to that employed on and off Indian reservations in other States. Outside Indian territory no Federal restrictions against alienation would apply. We understand that the intent of this provision is that these lands would be held in fee by the tribes as, for example, off-reservation fee lands of the Navajo Tribe are held. Within Indian territory, tribal trust lands would be restricted, but could be leased, exchanged, or transferred under certain circumstances with the approval of the Secretary. Since existing Federal statutes authorizing the leasing and transfer of tribal lands and natural resources would not be applicable, no standards would be provided for the exercise of the Secretary's approval authority. The application of such existing leasing and transfer authorities—perhaps enumerated in this section—would assure our ability to protect tribal trust lands and clarify the respective roles of tribal and Federal officials. I expect that we should be able to clarify this sufficiently in consultation with State and tribal officials.

Our reading of section 6 of S. 2829 and related provisions of the State Implementing Act is that the respective authority of the State and the tribes would not be radically different from the jurisdictional relationships which exist among other States and tribes. However, the relationship in this settlement proposal is not always clear, and we think a re-working of the relevant language is in order. Furthermore, because the numerous references in S. 2829 to the Maine Implementing Act make an understanding of the jurisdictional relationships difficult, we believe that such relationships should be spelled out in the Federal legislation.

Under the State Implementing Act, the Passamaquoddy Tribe and the Penobscot Nation would largely retain their inherent authority over their own members, but would also be treated as municipalities under State law. We have a conceptual problem with this model. Maine municipalities derive their powers from their individual charters, but the two tribes have no constitutions or charters, or even a traditional governmental structure. They have long operated under State laws which would be repealed by the Implementing Act. To clarify the jurisdictional relationships and to provide for viable tribal governments in the future, we recommend that S. 2829 be amended to provide for the development of tribal constitutions and charters along the lines provided in the Indian Reorganization Act.

Section 6(c) would waive the sovereign immunity of the two tribes as provided in the Implementing Act, which in turn provides in section 6206(2) that the tribes and their officers may be sued except to the extent that they are acting in their governmental capacity. This is similar to the waiver of sovereign immunity provided for in the "sue and be sued" provisions of charters of tribal corporations organized under section 17 of the Indian Reorganization Act. This is sensible

since any governmental entity which seeks to enter into commercial transactions must agree to limited waivers of its sovereign immunity. However, confusion may arise when one attempts to distinguish between actions taken by a tribe in its governmental capacity and those taken in a proprietary capacity. Again, one means of clarifying this distinction would be to authorize each Tribe to adopt a constitution which would govern the activities of tribal government and also a corporate charter which would govern the tribe's business activities. The tribal corporation could then be sued in the courts of the State as provided in the Implementing Act.

Section 6(c) would also allow persons with unpaid final judgments against the tribe to obtain payment from the income of the trust fund established under the bill. We believe this would unnecessarily increase our administrative burden and involve us in unnecessary litigation. One alternative might be to authorize judgment creditors to attach the income before it is paid to the tribes. As now drafted, the provision would be unique in Federal Indian law, as well as inconsistent with section 5(b)(3) of the bill, which provides that income from the fund shall be made available to the tribes "without any deductions."

We strongly object to the language of section 6(d), which would give Congressional consent to future amendments to the Maine Implementing Act. We understand from discussions with tribal and State representatives that this was not the intent of this section. Rather, it was intended to provide the parties with future flexibility in adjusting their jurisdictional relationship under the State Implementing Act. Since that is the case, we recommend that section 6(d) be amended to authorize the making of future jurisdictional compacts between the tribes and State, provided that the roles of Federal officials are not affected thereby.

Under section 6(f), adjudications of the Passamaquoddy Tribe and the Penobscot Nation would be required to be given full faith and credit by the United States, the States, and all other Indian tribes. Although some courts have accorded full faith and credit to tribal judicial proceedings, statutory requirements for such full faith and credit presently exist only with respect to child custody proceedings. In addition, since tribal governmental actions are not reviewable except in habeas corpus proceedings in Federal court, a tribal court adjudication that violates the Indian Bill of Rights might be required to be given full faith and credit. We therefore believe that this provision should be deleted from the bill.

Section 6(g) of S. 2829 would provide that Federal laws specifically applicable to Indians, Indian tribes, Indian lands, and Indian reservations shall not apply in Maine, except that the Passamaquoddy, Penobscot, and the Houlton Band would be eligible to receive all financial benefits the United States provides to Indians. This single provision would make inapplicable every provision of Federal law codified in title 25 of the United States Code and all other Federal Indian laws except certain unspecified provisions respecting "financial benefits." The task of identifying those provisions would be a time-consuming and probably litigious one. We believe that any laws not intended to apply should be specifically enumerated in S. 2829.

Initially, we were concerned that the taxation provisions of section 6208 of the State Implementing Act might result in early depletion of the trust assets provided to the tribes under the settlement. However, we now understand that the tribes do not intend to acquire large acreages outside "Indian territory," where such lands would be subject to real property taxation, except to enable them to exchange such lands for other woodlands within "Indian territory" where they would be immune from such taxation. The in-lieu payments which the tribes would be willing to make for lands within their Indian territories would be very small since the tribes themselves will be the municipalities with the authority to levy the bulk of such taxes. Such in-lieu payments will apparently be made primarily to the counties in return for the provision of services comparable to the value of the in-lieu payments. We prefer instead of fashioning this arrangement in terms of the making of in-lieu payments, that the tribes merely negotiate contracts with the counties for the provision of such services.

Section 4 of S. 2829 raises another question respecting Federal-State relationships. Paragraphs (ii) and (iii) would approve and ratify transfers of land in Maine that were made in violation of State law. This is a wholly novel provision for a Federal statute and may render the United States liable for the State's failure to enforce its laws. The same can be said of section 11 of the bill. We thus object to the inclusion of such provisions. We also note that subsection (a) of section 4 is overboard in that it would ratify land transfers in Maine regardless of any provision of the Constitution and Federal law. This would, of course, include statutes not specifically applicable to Indians, such as antitrust laws, laws respect-

ing national parks and wildlife refuges, and the Fifth Amendment. This could also give rise to unforeseen liability on the part of the United States.

The bill would also recognize the Houlton Band of Maliseet Indians as an Indian tribe, provide for the acquisition of 5,000 acres of land for the band, and extend Federal Indian services to the band. The Houlton Band is an organized group of 350 to 600 individuals located in the Houlton, Maine area. The Houlton Band is not presently a Federally recognized tribe. Various Canadian Maliseet groups have been recognized in that country.

The Houlton Band asserts a Nonintercourse Act claim arising out of aboriginal possession of portions of northern Maine and a 1794 treaty. While the Nonintercourse Act applies to both recognized and nonrecognized tribes, an Indian group must nonetheless establish that it constitutes a tribe in order to establish a claim under that Act. The Department has established the Federal Acknowledgment Project (FAP) to determine which nonrecognized groups constitute tribes. The Houlton Band has not submitted an acknowledgment petition to FAP.

Congress, of course, clearly has the power to recognize an Indian group as a tribe. We recommend that such power be exercised only in exceptional cases, lest too frequent bypasses of the FAP procedure lessen its integrity. We believe that the opportunity to settle all Indian land claims in Maine under the proposed settlement is such an exception. We, therefore, support the recognition of the Houlton Band in S. 2829 as part of this comprehensive settlement.

Finally, we believe it is critical that passage and implementation of this legislation put an end to this dispute. For that reason, the provision extinguishing all tribal land claims in Maine must be carefully drafted. We would urge, moreover, that the bill also provide that no Federal money will be disbursed under the Act—either for the trust fund or for land acquisition—until the tribes have stipulated to a final judicial dismissal of their claims. We understand that the tribes have no objection in principle to the inclusion of such a provision. Again, as with all other questions I have raised, the Administration stands ready to work with all parties to obtain a mutually satisfactory bill. We plan to work with the tribe and the State between now and July 21 to develop amendments to S. 2829 which will address the concerns expressed today, and a number of others. We plan to report formally to the Committee after the July recess on the results of our efforts.

I will be happy to respond to any questions you may have.

Senator COHEN. Our next witness is the Honorable Joseph E. Brennan, Governor of the State of Maine. The Governor has been involved in the land claims case from its beginning, first as Maine's attorney general, and now as Governor. We welcome him and look forward to his comments.

STATEMENT OF HON. JOSEPH E. BRENNAN, GOVERNOR OF THE STATE OF MAINE, ACCOMPANIED BY DAVID FLANAGAN, LEGAL COUNSEL TO THE GOVERNOR'S OFFICE

Governor BRENNAN. Thank you, Mr. Chairman and Senator Mitchell. First I would like to introduce legal counsel to the Governor's office, Dave Flanagan, and I want to thank the committee for inviting us to appear to give our views on this important piece of legislation.

At the outset, I do want to state categorically that the State of Maine has clean hands, and I would suspect that the two U.S. Senators from Maine would share that view.

As has been stated, the claims of these two tribes are enormous, involving over half the land in our State and some $25 billion.

I believe that they are the most extensive and the most complex claims filed by any Eastern tribe. In fact, the Federal official involved in this matter once stated that it was probably the most complex piece of litigation ever to face the Federal courts.

With respect to the interest of the State of Maine, I would like to begin by stating that as attorney general from 1975 to 1978, I was

personally responsible for the defense of the State against these claims. After working extensively with the attorneys, with historians, with anthropologists, and other experts, I reached the conclusion that the State could defend itself and the people of Maine successfully against the legal claims of the tribes. I continue to believe that if we must defend these claims in court, the State would ultimately prevail.

At the same time, I have been involved with this case long enough and deeply enough to recognize that there are responsible, competent legal anaylists who do not share that view, and I have practiced law long enough to realize that any time any claim is litigated, there is a risk of an adverse verdict, however unjust or unfair it may seem to the participants.

So, notwithstanding my deeply held conviction that the State would and should prevail, I acknowledge that this legislation, which will provide for a settlement, is in the best interests of all the parties concerned.

First and foremost: It will with absolute certainty terminate the aboriginal claims once and for all. Second, it will spare the State the tremendous cost of litigation, not only directly on the public treasury, but more importantly, indirectly through interruptions in our access to the finance markets and through creating clouds on titles in over half the State.

In short, litigation may result in economic chaos for the people of our State.

Let me put these considerations into perspective. We could expect the tribes to make a claim in court for more than $25 billion in damages against private landowners and homeowners in the State and for millions of acres of land. During the long and uncertain period of litigation, we could reasonably expect that the ability of the State and private developers to market bonds would be severely jeopardized. Indeed, real estate markets in half of Maine could be frozen as they were a couple of years ago in the town of Mashpee in Massachusetts. The ability to secure financing for private economic development could be paralyzed.

You know that we are making every effort to increase economic development in our State. It is the first priority of our administration. I can think of no single factor which could have a more devastating impact on decisions by business to invest and to expand in our State than the active litigation of these tremendous claims.

Even now, every month that passes with these claims unresolved, there must be, to some effect, a chilling on the prospects of business growth.

With the economic problems facing our Nation and Maine at this time, the resolution of these issues must be of very great concern to responsible leaders of a State which, when the cost of energy is considered, may have the lowest per capita income in any State in this Nation and where good, well-paying jobs are desperately scarce.

So, while I believe the State would prevail in court, I am likewise convinced that a reasonable out-of-court settlement as embodied by this legislation would better promote the interest of the people of Maine than years of bitter litigation with its inevitable adverse economic consequences.

settlement. This proposal contemplated a federal payment of $25,000,000, a State payment of $25,500,000 to be made over 15 years, and 300,000 acres of lands from private parties, for which landowners would be reimbursed $5.00 per acre by the federal government. The total value of this proposal to the Tribes was roughly $90,000,000. Principally because neither the State nor landowners played any role in negotiation of this second proposal, it was rejected by the State and did not become the basis for settlement.

Finally, in October, 1978, the White House announced a third settlement plan through then United States Senator William Hathaway and Presidential Counsel Robert Lipshutz. This settlement consisted of a $27 million permanent trust fund, a $10 million land acquisition fund to buy 100,000 acres of land and $25 million in grants and loans, all to be provided by the federal government. The total value of this proposal was roughly $62 million. No payment from the State was proposed by the White House. This proposal was agreed to by Governor Longley, Attorney General Brennan, Senator Muskie, Senator Hathaway, Representative Cohen and Representative Emery. The Tribes, however, never accepted the plan and ultimately rejected it on the ground that they had been led to believe they were entitled to more land under the terms of the February, 1978 proposal that the Tribes had negotiated with the Administration.

[The remainder of Attorney General Cohen's prepared statement was read into the record and begins on p. 159.]

Senator COHEN. We have several more witnesses that are scheduled to testify this morning. We have this room until 3 o'clock, so why don't we proceed at least until 1 o'clock or 1:30. Then we will take a half-hour break until 2 o'clock and proceed from 2 to 3 o'clock.

Mr. Tureen, why don' you bring your clients forward.

We are going to hear from representatives from the Passamaquoddy and Penobscot negotiating committee. They will be accompanied by Thomas Tureen, their attorney, who is with the Native American Rights Fund.

We welcome you to the hearings and look forward to any remarks you may care to give on behalf of the tribes.

Again, I would ask, if you could, to summarize your testimony. Your full testimony will be included in the record.

Mr. TUREEN. First we will hear from Mr. Andrew Akins.

Senator COHEN. Mr. Akins, please proceed as you wish.

STATEMENT OF ANDREW AKINS, CHAIRMAN, PASSAMAQUODDY-PENOBSCOT NEGOTIATING COMMITTEE, ACCOMPANIED BY THOMAS TUREEN, NATIVE AMERICAN RIGHTS FUND; PRESENTED BY CLEVE DORR, LIEUTENANT GOVERNOR, PASSAMAQUODDY TRIBE

Mr. AKINS. Thank you, Senator Cohen. I would like to introduce Cleve Dorr who will read my prepared statement.

Senator COHEN. Thank you. That will be fine.

Mr. DORR. My name is Cleve Dorr, Senator Cohen. I am Lieutenant Governor of the Passamaquoddy Tribe at Pleasant Point.

Mr. Chairman, this statement is submitted on behalf of the Penobscot Nation and the Passamaquoddy Tribe in support of S. 2829.

This is an historic moment for our tribes, one for which we have waited a very, very long time. When I speak of a long time, I am not talking about the mere 10 or so years that we have been pursuing our land claims and asserting our jurisdictional rights in this most recent round of court cases. I am talking instead about the 200-plus years

that have passed since General George Washington and Col. John Allan, the superintendent of the Federal Government's Eastern Indian Department, sought and received the support of our tribes in the Revolutionary War in return for a promise that the United States would forever protect our lands. I am talking about the 180 years that have passed since this Congress adopted the first Indian Nonintercourse Act which extended that same land protection to all Indian tribes.

We have been waiting all of these years, because until now the Federal Government has failed to carry out the promises made by George Washington and Colonel Allan or to fulfill the mandate of the Nonintercourse Act. In the absence of Federal protection, Massachusetts and Maine have violated the rights of our tribes in numerous ways.

First and foremost, these two States have taken practically all of our lands. Most of these lands were taken in a series of illegal and grossly unfair treaties during the period 1794–1833. The Passamaquoddies received nothing at all for the lands taken in these treaties, the Penobscots almost nothing. Some of our lands have been taken more recently, as in the case of the 999-year leases that the State of Maine granted about 100 years ago on lands within Indian township, and the land which was carved out of the tiny 100-acre Pleasant Point Reservation during the 1950's.

At the same time, the State of Maine has consistently refused to recognize the sovereign rights of our people. Unlike the United States, which regards Indian tribes as possessing all aspects of sovereignty except those which have explicitly been taken from them, the State of Maine has always taken the position that our tribes have no inherent sovereignty and can exercise only those powers of self-government that Maine gives us. Thus, while the State of Maine has been comparatively more enlightened during the last 15 years, and has passed statutes which recognize in our tribes a greater degree of self-government than was previously the case under State law, Maine has stopped far short of recognizing our legitimate right to manage our own internal affairs. Indeed, before the present negotiations, we had absolutely no assurance that the State would not simply wipe away the few comparatively enlightened statutes that it had passed.

In short, the years of failure on the part of the Federal Government to carry out its moral and legal trust responsibilities toward our tribes left us a nearly landless people whose inherent sovereignty was ignored by the only government which paid any attention to us.

But through all of this we have survived. Perhaps we have survived because we live in a part of Maine which is so isolated, stuck off as it is in the side of Canada, and which is a part of the United States only because of our efforts in the Revolutionary War. Perhaps we survived because of our stubbornness and determination. But for whatever reasons, we have clung to the lands which we still possess, and during the past 10 years, have finally succeeded in bringing our grievances successfully to court.

In a series of decisions too long to detail in this short testimony, the courts of both the United States and the State of Maine have consistently recognized our right to protection under the Nonintercourse Act, the trust responsibility of the United States to act on

our behalf, the existence of our inherent tribal sovereignty, and the "Indian country" status of our lands.

It was this string of decisions which ultimately persuaded the executive branch, under both the Ford and Carter administrations, that the Federal Government must take the lead in bringing about a settlement of our land claims. The negotiations which resulted took 3 years to complete, and have produced the legislation before you today.

The settlement provides sufficient funds to purchase 300,000 acres of average quality Maine woodland for our tribes and to establish two $13.5 million trust funds. The settlement also deals with a variety of jurisdictional issues. For example, under the terms of the legislation the State of Maine relinquishes the power to interfere in our internal affairs which it formerly claimed, and agrees that the jurisdictional terms in the legislation cannot be changed in the future without the consent of the affected tribe. By the same token, under the terms of the settlement we are assured that non-Indians will never be able to assert a constitutional right to a voice in our decisionmaking processes. All of this, of course, is in addition to protections against alienation of our lands, including eminent domain takings, which the settlement legislation includes. The security which this compact provides is of great importance to us.

I would urge your timely attention to this bill. We understand that it requires some technical refinement. For example, because the funds for acquisition of the lands and establishment of the trust funds are not being simultaneously provided, and because the land cannot thus be instantly acquired, we cannot agree to the extinguishment provision as it is presently drafted. We are working already with representatives of the State, the administration, and this committee on appropriate new language. We also see that some clarification may be required to insure that our tribes shall be eligible for the same services as other federally recognized tribes. While we are prepared to work on such technical matters, we would only remind you of the obvious: This bill represents a negotiated settlement of a lawsuit and cannot be altered without the consent of the parties.

Thank you for your time and consideration.

Senator MITCHELL. Is there anyone else who would like to make a statement?

STATEMENT OF CARL NICHOLAS, LIEUTENANT GOVERNOR, INDIAN TOWNSHIP, PASSAMAQUODDY RESERVATION

Mr. NICHOLAS. Senator Mitchell, my name is Carl Nicholas. I am Lieutenant Governor of the Passamaquoddy Tribe of Indian Township.

Due to the sudden illness of our tribal Governor, Harold Looey, who is hospitalized and unable to attend, I am here on behalf of the Passamaquoddy Tribe of Indian Township.

Senator Mitchell, it is also a pleasure to support today S. 2829, the Maine Indian Claims Settlement Act of 1980.

After years of negotiation with the State of Maine, the negotiating committee presented to the tribal members of Indian Township, at its general meeting held in Indian Township, the final package for a

referendum vote for approval of this package. It was passed by an almost unanimous majority of the members present at the meeting.

Again, the Passamaquoddy Tribe of Indian Township supports the settlement package, and the Passamaquoddy Tribe also supports the Houlton Band of Maliseets. I express this support on behalf of my tribe.

Thank you.

Senator MITCHELL. Thank you, Mr. Nicholas.

Mr. TUREEN. Next we have Mr. Pehrson.

STATEMENT OF WILFRED PEHRSON, GOVERNOR OF THE PENOBSCOT NATION

Mr. PEHRSON. Thank you Senator Cohen and Senator Mitchell.

I am down here today on behalf of the Penobscot Nation in support of S. 2829.

My people authorized the negotiating committee and endorsed the result by reservation-wide vote. I lived with the land claims for a long time. I am pleased that it is nearly over so that we can begin to live as we were intended, with a future as well as a past.

Tomorrow you will hear voices of opposition to S. 2829. I have also been elected to represent those of my people who disagree with the conclusion reached by the majority of the tribes. I support their right to present their views to this committee.

You need to hear their concerns, their mistrust, their rage, and all of the feelings which run deep in us because of the way our people have been kicked around for centuries. Hear them, for they are our people and our relatives. They want to get even and carry this to court, whether or not we ever win, but most of out people feel we have won. That is why I am down here today speaking in behalf of the Penobscot Nation in support of S. 2829.

Thank you.

Senator COHEN. Thank you very much, Mr. Pehrson.

Mr. TUREEN. The next witness is Mr. James Sappier.

Senator COHEN. Mr. Sappier, please proceed as you wish.

STATEMENT OF FRANCIS C. SAPPIER, NEGOTIATING COMMITTEE MEMBER, PENOBSCOT NATION TRIBAL COUNCIL

Mr. SAPPIER. Thank you, Mr. Chairman, and Senator Mitchell.

My name is Francis C. Sappier, Penobscot Nation tribal council member.

I am here to give my support for the Maine Indian Land Claim Act of 1980, S. 2829. The history of this settlement will mean a lot to the Penobscot Nation so that we can preserve our Indian culture with a museum and library, our Indian language and traditional rites, Indian lore, and creation of a full nation government and a constitution.

In closing, I support this settlement, S. 2829. It will bring a just conclusion, for all concerned, to the many injustices of the past.

Thank you.

Senator COHEN. Thank you, Mr. Sappier.

Mr. Akins, are there other witnesses?
Mr. AKINS. Yes. We have Mr. Francis.
Senator COHEN. Mr. Francis, you may proceed as you wish.

STATEMENT OF JOSEPH FRANCIS, MEMBER, PENOBSCOT NATION TRIBAL COUNCIL

Mr. FRANCIS. Thank you, Senator Cohen and Senator Mitchell.

My name is Joseph Francis. I am a member of the Penobscot Nation tribal council. I have been chosen as the tribal council spokesperson today, and I am here to support the Maine Indian Land Claim Settlement Act on behalf of the Penobscot tribal council.

I have found many inequities in the act, and generally speaking, it is not so appealing to me or my people. But commonsense outweighs principle, and this act was ratified 2½ to 1 on a referendum ballot, while realizing that all parties have exhausted all of their resources in seeking a just and fair settlement. You will hear others opposing this settlement today, but they do not reflect the opinion of the tribal council, the majority of the tribe, or the people of the State of Maine.

Thank you, sir.

Senator COHEN. Thank you, Mr. Francis.

Mr. AKINS. We are finished and will answer any questions you may have.

Senator COHEN. I have a series of questions, and I will direct them either to you, Mr. Akins, or to your attorney, Tom Tureen.

Just for my own purposes, you have indicated we are going to be hearing testimony tomorrow from opponents of this particular settlement from both within the tribe as well as some expression of opposition from nontribal members.

Could you explain your relationship with those Indians who will be testifying in opposition? Are they members of the Penobscot and Passamaquoddy Tribes?

Mr. AKINS. From what I understand, they are all Penobscots, and they are all our members. We do not have problems with them being here. It is a matter of their right.

Senator COHEN. I want to make it clear for the record, there has been some suggestion that this is not going to be a full and open discussion and debate by all parties concerned. We, Senator Mitchell and I, have tried to make it clear for the record that we are allowing as many parties as we can, within the time constraints that we have, to present their testimony, both in favor and in opposition. So, we look forward tomorrow to hearing those tribal members who will express their opposition and the reasons for that expression of opposition as we do for nontribal members who are also opposed to the settlement itself.

Representatives this morning from the State of Maine have indicated their so-called bottom line in terms of what basic principles are involved for a settlement on this issue. One was the question of no State land or State money. The other was no jurisdiction of other nations and the retention by the State of both civil and criminal jurisdiction over the tribes.

What would be the bottom line in terms of the tribes' acceptance of this settlement? What would be indispensible if Congress were to, in fact, reject some of the provisions? What are those basic elements from which the tribes would not or could not deviate?

Mr. AKINS. Senator, our bottom line is 300,000 acres of land plus a trust fund of $27 million. That is the bottom line.

Senator COHEN. In other words, if the Congress were to lower the amount in the trust fund, it would be rejected by the tribes. Is that correct?

Mr. AKINS. Yes.

Senator COHEN. What would be the effect if Congress were to reduce the amount of land itself, the 300,000 acres? Would you reject it?

Mr. AKINS. We would really have no option but to reject it.

Senator COHEN. What if Congress were to reduce the amount of money to be appropriated for the total settlement package? In other words, if Congress were to reject the $81.5 million, but nonetheless retain the trust fund of $27 million and the 300,000-acre provision, leaving that intact?

Mr. AKINS. No.

Senator COHEN. That does not affect the tribes as far as the tribe is concerned. The landowners might have some objection, however. Is that correct?

Mr. AKINS. Well, we have made an agreement to purchase the land at a certain rate. If you or anyone else can convince the landowners to sell for less, that is fine with us.

Senator COHEN. That would be fine with the tribe, but I assume the landowners or their attorneys, who will be testifying shortly, would say that is not fine with them, and there goes the basis for the settlement.

There was a report on April 27 of this year which described the manner in which the tribes anticipate the use of this land. There was reference to the purchase of two sawmills owned by the Dead River Co. and that the Dead River would be on, let's say, a management contract for 5 or 10 years. Is that correct?

Mr. AKINS. Five years.

Senator COHEN. What is the state of those negotiations right now? Can you tell us what kind of arrangement has been made? For example, would the company get a percentage of the tribes' net profits? What are the financial arrangements between the tribes under the operation of those two sawmills?

Mr. Tureen?

Mr. TUREEN. Senator Cohen, there is a draft of the proposed contract between the two tribes and the Dead River Co. for management. There are two contracts and frankly I—one runs for 5 years and the other runs for 10. I do not remember which is which. I think the proposed land contract is the longer of the two. It is important to note, though, first of all, that these are proposed contracts. Neither has been agreed to. Second, they both contain a provision for termination on 6-month notice so that if the arrangement does not work out, it can be terminated by either party—either side on 6 month's notice.

The proposed contract does provide for Dead River to be paid a percentage of the net profit. As I say, those contracts have not been finalized, and I don't think it serves a lot of purpose to discuss the details of them since they have not been finally negotiated. They would

also relate to the provision in the legislation which provides for management of the land in accordance with reasonable terms put forth by the tribes.

What we have envisioned in discussing this is that those lands will be managed during the early years, in any event, by the Dead River Co. in close consultation with the tribes pursuant to these contracts, if we are able to reach a satisfactory contract. That would be the way in which the property was handled initially. Most of the land, as you know, would be coming from the Dead River Co. They currently manage the lands. We know they are pretty good land managers, and this would allow for a smooth transition during which time the tribes could expand their own staff of land managers.

Senator COHEN. Is it fair to say that this comes at the request of the tribes rather than the insistence by the Dead River Co.? Some opinion has been raised in various editorials concerning the unique treatment of the land that will be transferred by the Dead River Co., the implication being that they are going to derive a benefit out of the entire transaction. If you couple that suggestion with a management contract in which there is a percentage of the net profits, you start building up at least the impression that this is benefiting the Dead River Co. at the expense of the Federal Treasury or perhaps even the State of Maine.

Am I clear from your statement that this management contract, as such, comes at the request of the tribes and not the company?

Mr. TUREEN. I think it is mutual.

Let me say at the outset that people have the habit of seeing the worst and expecting the worst. We fully welcome any scrutiny of any part of this and, as Secretary Andrus testified earlier, their appraisers have justified the prices that have been negotiated for the lands so far.

The Dead River Co. was interested in that management agreement for a very simple reason. They are prepared to sell practically all of their lands. They have a staff in-house, and it was their feeling they did not want to put those people out of work overnight. They told us that they were reluctant to sell all of those lands if it meant overnight putting their staff out of work.

There is a coincidence of interest there because the tribes for their part are going to need assistance in land management during the early years. So the interest of the Dead River Co. in terms of their own employees and the interest of the tribes in needing management coincided. I think it was very much a mutual matter that we have gone as far as we have in terms of discussing that arrangement. No contract, of course, has been signed yet.

Senator COHEN. That is a 6-month notice of termination?

Mr. TUREEN. That is correct.

That is something that does not get talked about very widely, but it is a very important feature of that agreement.

Senator COHEN. In the testimony before the Joint Select Committee on the Maine Indian Settlement in Augusta, James St. Clair, who is the attorney for the State, or at least a consultant for the State, said that he believed the proposed settlement fairly reflects the potentials for winning and for losing that exists between the State and the tribes.

Mr. Tureen, would you agree with that statement?

Mr. TUREEN. We have avoided stating odds on these cases. Andy Akins stated in those same hearings that he believes the odds were 80–20. I think it is a very difficult and dangerous business to get into.

Senator COHEN. Let me explain why I asked you that question.

You have come under some criticism, I assume, as have some of the tribal council members, that you did not negotiate from full strength and that you could have, in fact, gotten a better deal and that you should have held out for more. I assume that will be the testimony tomorrow.

Is it your considered judgment that you negotiated from equal strength, and this does fairly reflect the potentials for winning and losing under the circumstances?

Mr. TUREEN. I think we certainly negotiated from mutual strength. I would agree with what Dick Cohen said earlier—that the negotiations in this case all around were characterized by a mutual respect and were carried on in a commendable atmosphere. It was not always harmonious, but commendable.

The judgments that go into deciding when to pull the string on a settlement are very difficult and are not easily articulated.

You should understand that Indian tribes are inherently conservative. They are very concerned about their futures. They are very concerned about the long view. All I can say is that my clients made a judgment that this settlement at this point in time is appropriate for them to take. This settlement in hand is worth more than the prospect of litigation. We too, my clients and I, think about the social aspect of the disruption that would go along with litigation. Anyone can criticize a negotiated settlement. By definition you can always get more—one could say that you could have gotten more because the settlement is a compromise. We are not entirely happy with it, but that is what we have reached, and that is what a compromise is.

Senator COHEN. In section 5(d)(1), the amount of money appropriated for the purchase of lands for the Maliseets is $900,000 and is tied to a specific amount of land, namely, 5,000 acres. Why is the money appropriated for the acquisition of lands for the Penobscot and Passamaquoddy Tribes not also tied to a specific number of acres?

Mr. TUREEN. There is not any particular reason. The State legislation, as you know, contemplates acquisition of 300,000 acres. It is the first 300,000 acres that is acquired within the designated area that will receive Indian territory treatment. In fact, the amount of money that is being appropriated from our assessment is sufficient to buy 300,000 acres of average quality land.

Senator COHEN. In section 6(g) and in other sections of the proposed Federal act, many of the Federal Indian laws are made inapplicable to the Maine Indian tribes. I would ask you, Mr. Tureen, in the testimony before the Joint Committee of the Maine Legislature, in Augusta, you said that as the negotiations proceeded, the Maine tribes came to see the general body of Federal Indian law as a source of unnecessary Federal interference in the management of tribal property.

Is this sentiment the reason behind the exclusion of much of the Federal Indian law from the settlement bill?

Mr. TUREEN. Again, there is no simple answer. The general body of Federal Indian law is excluded in part because that was the position that the State held to in the negotiations. It was the State's view that

the destiny of the Maine tribes as much as possible in the future should be worked out between the State and the tribes.

The tribes were concerned about basic fundamental Federal protections which they had not had before the recent round of court cases. So it is also true to say that the tribes are concerned about the problems that existed in the West because of the pervasive interference and involvement of the Federal Government in the internal tribal matters.

Senator COHEN. The reason I raised the question is because tribes in other parts of the country are going to look to this particular section and raise questions as to why they could not enjoy a similar type of freedom from Federal intervention in the control of their lives. That is a question that other members of this committee are going to want to deal with. I am sure it is going to be raised by other Members of the Senate and perhaps the Congress itself.

If I follow this theme a little bit, in section 5(e) the Federal act provides that 25 U.S.C., section 177, the present codification of the Nonintercourse Act, will not be applicable to the Maine tribes. It is replaced by a special restraint on alienation which is found in section 5(e)(2).

Why did you feel this new section on alienation was needed?

Mr. TUREEN. Let me preface that by saying that in terms of what you were saying a moment ago, if there was only one kind of relationship the Indians had to the United States, one might be more concerned about the precedential nature of this settlement. The fact is that there are a myriad of different kinds of relationships that Indian tribes have with the United States.

Senator COHEN. I do not think any of them enjoy the status of the municipality, though.

Mr. TUREEN. They are all different. They range from terminated tribes to the Alaska Natives to the 280 tribes. There are all kinds of different relationships—the Narragansett settlement that was passed in the last Congress.

With all due respect, and I know these questions will be raised, and I would expect them, I do not see why the addition of one more peculiar unique relationship between the United States and a tribe, or two, or three tribes, is going to substantially change the situation that we have today because it is already the nature of Federal Indian law. It is already highly idiosyncratic.

I am sorry. Can you repeat your basic question again?

Senator COHEN. I am wondering why you felt that this special restraint on alienation was needed?

Mr. TUREEN. That was a matter of convenience, and purely that

Senator COHEN. Does the new section carry with it the whole body of law that we now have pertaining to the Nonintercourse Act?

Mr. TUREEN. Yes, without any question. The statutes are the same. There are a couple of minor differences.

In our negotiations we provided our own Nonintercourse Act merely as a matter of convenience because it is only going to apply to particular lands in Maine.

Senator COHEN. In section 8(c) of the Federal act, the Federal Government is prohibited from counting the income realized as a result of the implementation of section 5 which is the "Establishment

of Funds" section of this bill in computing any aid to individual or households, members of those households, or the tribes.

How did this provision come to be included?

Mr. TUREEN. Or to the tribes themselves.

Well, this is not novel. We understand this provision has been included in other Indian statutes. I believe that the particular language here was taken from a Navajo-Hopi settlement. It is fairly obvious that that is essential. For example, the settlement provides for a portion of the trust funds to be set aside for older members of the tribes, for income to be paid to them. Absent this kind of protective language, the money paid to them could simply reduce their social security. The tribes, through their settlement, would be subsidizing the social security fund, which I do not think is the intent of the settlement. It is intended to benefit the Indians, not merely to supplant other Federal spending.

Senator COHEN. This committee has received a letter, which I mentioned earlier today, from Robert Coulter of the Indian Law Resource Center, advising that the Penobscot and Passamaquoddy Tribes should be allowed to reassess the settlement package in light of the United States June 10 decision in *Washington* v. *Confederated Tribes of the Coleville Indian Reservation*, and a decision that came down last Friday, *White Mountain Apache Band* v. *Bracker*.

Do you agree with that suggestion made by Mr. Coulter?

Mr. TUREEN. No. I read both of those opinions, but aside from whatever they say, I do not know how one could enter into negotiations with another party who took the position that every time the Supreme Court handed down another case, the matter should be reopened. That is what a negotiation is. At a particular point in time you reach an agreement, and if you are bargaining in good faith, that is what you do.

Senator COHEN. Then if you have reached your settlement with the State which you feel is fair and reasonable, and even though other cases might be cascading down that would tend to make your case appear to be stronger, you do not feel it would be responsible or appropriate to reconsider it at this point?

Mr. TUREEN. We have negotiated in good faith. We assume the other side has, and it would preclude that kind of behavior.

Senator COHEN. That is all I have for now.

Senator Mitchell?

Senator MITCHELL. Mr. Tureen, what, in your judgment will happen if this legislation is not enacted?

Mr. TUREEN. We will file our suits. The Federal Government, I assume, will proceed with litigation and the tribes will also proceed with litigation. We have established in several cases that tribes can proceed on their own.

Senator MITCHELL. Based upon your experience in this and other cases, what would litigation involve?

Mr. TUREEN. It would involve—there are a variety of ways in which the suit could be brought. I really cannot get into discussing precisely how we would file the action. That is a decision that I would have to make with my clients and with my colleagues. But it would be a suit pressing the claim that we have found the tribes to have and which the Justice Department has found the tribes to have.

Senator MITCHELL. If the matter were litigated all the way, do you have any way of estimating how long it would take?

Mr. TUREEN. The estimates of 6 to 10 years, I think, are conservative. My guess is that it would probably be at least that long, and perhaps twice that long.

Senator MITCHELL. If you get into all-out litigation, would it be your intention to use all legal resources at your command to press the claims in behalf of your clients?

Mr. TUREEN. There is no doubt about that.

Senator MITCHELL. Including those that would have an effect on title to land throughout the affected area?

Mr. TUREEN. The tribes would be seeking full restitution under the law and would be using every legal means available to them to press their claims forcefully and effectively.

I am ethically bound to do that. The tribes are morally bound to do that.

Senator MITCHELL. What effect, in your judgment, would this settlement have upon other suits by tribes throughout the Nation?

Mr. TUREEN. I would think that this would only have a direct effect on the Nonintercourse Act claims, and there are only a handful of them in the East.

I think Secretary Andrus was correct this morning when he said that the most important result of this is to demonstrate that Indian tribes and State governments and the Federal Government can negotiate in good faith and can reach an agreement on their differences which is reasonable and appropriate and fair.

I think that that is the most important thing that this settlement stands for. That is, the proposition that disputes between Indians and others should be either resolved through the courts or through an honorable negotiated process.

Senator MITCHELL. You heard my earlier questions regarding alienation of land and how that position does not apply to the lands to be acquired by the Maliseet Band. Do you have any comment on that—that is, on the suggested criticism that this could result in dispersal of Maliseet land as opposed to the Passamaquoddy and Penobscot land?

Mr. TUREEN. My clients support the Maliseet Band—the Houlton Band of Maliseet Indians. They have, throughout this process. They would very much like to see their lands protected.

As you know, it is the Passamaquoddy and Penobscot Tribes which have agreed, out of the funds set aside for them in the settlement, to provide 5,000 acres for that band. We would hope and urge that the Congress would provide, at least minimally, the same kind of protections for the land as it provided for Indian territory lands of the Passamaquoddies and Penobscots. We would hope that the State of Maine would concur in that one provision.

Senator MITCHELL. There exists a State law which has been enacted and legislation which is now proposed in Congress. Is there anything else which any party anticipates receiving which is not contained in these two documents? That is, are there any ancillary agreements, any side agreements, any other provisions that are not included in the State legislation and this proposed Federal legislation?

Mr. TUREEN. There are things which flow from this but no separate agreements. For example, this legislation provides that the Maine

tribes will now, for the first time in history, begin to receive their full share of Federal Indian programs. As you may know, they have been drastically short changed. During the last few years, those were the only years since 1832 when they received any benefits that were especially set aside for Indians at all.

Obviously, and we have discussed this with representatives of the Carter administration, that question of funding must be addressed. The Maine tribes must have an equitable share of money for which this legislation calls. They must have their fair share of capital improvement funds which have not been provided in the past. All of those are matters which we expect to address through the appropriate channels, the appropriations process—discussions with the administration and such.

Senator MITCHELL. As I understand your answer, then, apart from those matters that are specifically identified in the legislation, or which flow naturally from it, there are no separate matters. That is, the people of the State of Maine and the Nation can be assured that the agreements are self-contained and that whatever benefits ought to be received by either side are spelled out in the agreement. Is that a fair statement to make?

Mr. TUREEN. I think that is fair to say, except for things that would logically flow from those two pieces of legislation.

Senator MITCHELL. You heard Secretary Andrus and Attorney General Cohen both testify regarding some areas that they feel require some more work. Indeed, you yourself—not yourself, but Mr. Sappier, I think—identified such areas. I assume that your clients and yourself are prepared to continue working with the Secretary of the Interior and the State of Maine to resolve those areas, hopefully to meet the objections which have been raised by all sides, and to perfect this bill to eliminate in advance any possible opposition to it. Is that right?

Mr. TUREEN. There is no question about it. We are looking forward to doing that within the next couple of weeks. I would concur with Secretary Andrus and with Attorney General Cohen when they said that they feel we can be back by the time of markup with solutions.

Frankly, I would like to say that I have read Secretary Andrus' testimony in its entirety. I think it is remarkable that at this stage we have as few problems as we do. I do not see anything that he is raising that in my estimation is not soluble. Many of the matters that he has raised have already been discussed between members of the negotiating committee and representatives of the Maine attorney general's office and the administration.

I think for the most part we are dealing with technical refinements, matters of clarification, and no substantive changes.

Senator MITCHELL. In the ordinary land transaction, the buyer negotiates with the seller. It is the buyer who is paying the price. One of the comments made about this process which renders this unusual—I know you have heard this comment because it was made to you in a meeting which I attended by someone else—was that here you, representing the parties who will get the land, negotiated with the parties who were selling the land, but the person who is paying the money for the land was not in the room. This, I think you will concede, is an unusual situation.

What assurance will you give this Congress, the people of Maine, and the people of the Nation, that even though you were lacking the normal incentive that a buyer had, that is, that the money for the land or whatever goods or services were being purchased was coming out of the buyer's pocket, that you have negotiated a fair and a reasonable price for the land in question here?

Mr. TUREEN. Well, Senator, that normal incentive might not have been there but another very real one was. That was that we were going to have to face you today, and that you are going to have to face your colleagues in the Senate, and ultimately you are going to have to face the House of Representatives, and the administration is going to have to pass judgment on this.

We knew from the very beginning that unless what was negotiated was reasonable and fair and within normal commercial limits, it was not going to fly. That is why we—none of us is expert in these matters—hired the most competent consultant that we could find. He will testify tomorrow at the committee's request.

We fully expected from the beginning that all of this would be subject to scrutiny. I am pleased, but not surprised, that the Department of the Interior would send a team of appraisers up to Maine. They have come back and said that that which was done was appropriate and within normal commercial limits.

It is not that difficult, really, to price out Maine woodland. It is not as ethereal as is much real estate appraisal. Basically what you do is count the trees. You count the species. You multiply the number of trees by whatever the price is. You add in something for residual and the quality of the land, and you discount. It is fairly mathematical. I think what Interior found was that we did not deviate from that normal approach.

Senator MITCHELL. So I understand you conclusion to be that you and your clients are satified that the amount being paid for this land is a fair and reasonable one. If you had the money and were paying your own money, this would be a reasonable price from you standpoint.

Mr. TUREEN. I think that is the position of the negotiating committee at this point, and that will be the recommendation to the tribes, yes.

Senator MITCHELL. I have one final question.

You have heard me refer previously to questions raised in two documents which I put in the record, and I know you have seen these before. They may have slipped your mind in the intervening months, but since one of them seems to be directed at you, I wonder if I could ask that question and ask you to comment on it?

Mr. TUREEN. I try my best to forget about documents like that.

Senator MITCHELL. This is a question that appeared in the Bangor Daily News editorial of March 28, 1980. It was among a series of questions, and it says:

> If the Indians get their land and money in Maine, will the Native American Rights Fund and the other foundations that have bankrolled the Indians in their legal quest dispatch an army of well-financed lawyers to Maine, to chase down other historic injustices heaped upon the Native Americans by our forefathers?

Do you have any comment on that question?

Mr. TUREEN. We try to be effective advocates for our clients, and I hope that the Native American Rights Fund will continue to do that.

It should be apparent to the Bangor Daily News and to this committee that the Native American Rights Funds—that neither the Native American Rights Funds nor I, nor Archibald Cox, who is my cocounsel, nor the firm of Hogan and Hartz here in Washington, which has assisted us over the years—none of us has a contingent fee interest in this case or any contractual. The tribe has no contractual obligation to pay any of us anything.

The Bangor Daily News seems to be misinformed on that point. It seems to believe that 10 percent of this, or something, is going to go to the Native American Rights Fund, which is not true. But we try to be responsible advocates, and we try to effectively represent our clients. I hope that we will do that in the future.

Senator MITCHELL. Before you acquire specific parcels of land, I assume it will be your intention to conduct an appropriate search of the title of that land and make certain that the title will be a valid one that you will be receiving?

Mr. TUREEN. Under the scheme laid out, the land will be acquired by the United States. The United States has its own provisions for acquiring land, as I understand it. Generally speaking, it requires a consensual condemnation action, I believe. I am no expert on the Justice Department's procedures here, but it is my understanding that not only do they search the title but they cure any defect that may be there in any event.

Senator MITCHELL. Thank you very much, Mr. Tureen, and all of you gentlemen.

Senator COHEN. There is no financial arrangement between you and the clients you represent?

Mr. TUREEN. None.

Senator COHEN. Thank you, Mr. Tureen, and all of the other gentleman.

We have one final witness this morning. He is counsel for the landowners, Donald Perkins. He is with the law firm of Pierce, Atwood, Scribner, Allen, Smith, and Lancaster of Portland, Maine. He is legal counsel to several of the large landowners of Maine who have agreed to participate in the land transfers that are contemplated in this proposed legislation.

Mr. Perkins, we look forward to hearing your remarks.

If you could summarize your statement, it would be very helpful at this point in time. Your full statement will become a part of the record.

Please proceed, Mr. Perkins.

STATEMENT OF DONALD W. PERKINS, COUNSEL FOR LANDOWNERS IN MAINE, FROM PIERCE, ATWOOD, SCRIBNER, ALLEN, SMITH, AND LANCASTER, PORTLAND, MAINE

Mr. PERKINS. Thank you, Senator Cohen and Senator Mitchell.

My name is Donald W. Perkins. I am counsel for Maine landowners who have indicated willingness to provide options for the sale of forest land at fair market value to facilitate the settlement of the Maine Indian claims.

I understand that the Governor, the Maine attorney general, members of the Maine congressional delegation, and other public represen-

Section 2

Treaty made by the Commonwealth of Massachusetts with the Penobscot Tribe of Indians, June 29, 1818

This writing indented and made this twenty-ninth day of June, one thousand eight hundred and eighteen, between Edward H. Robbins, Daniel Davis and Mark Landgon Hill, Esqs., commissioners appointed by his excellency John Brooks, governor of the Commonwealth of Massachusetts, by and with the advice of council, in conformity to a resolve of the legislature of said Commonwealth, passed the thirteenth day of February, A.D. one thousand and eight-hundred and eighteen, to treat with the Penobscot tribe of Indians, upon the subject expressed in said resolve, on the one part; and the said Penobscot tribe of Indians, by the undersigned chiefs, captians and men of said tribe, representing the whole thereof, on the other part, Witnesseth, that the said Penobscot tribe of Indians, in consideration of the payments by them now received of said commissioners, amounting to four hundred dollars, and of the payments hereby secured and engaged to be made to them by said Commonwealth, do hereby grant, sell, convey, release and quitclaim, to the Commonwealth of Massachusetts, all their, the said tribes, rights, title, interest and estate, in and to all the lands they claim, occupy and possess by any means whatever on both sides of the Penobscot River, and the branches thereof, above the tract of thirty miles in length on both sides of said river, which said tribe conveyed and released to said Commonwealth by their deed of the eighth of August, one thousand seven hundred and ninety-six, excepting and reserving from this sale and conveyance, for the perpetual use of said tribe of Indians, four townships of land of six miles square each, in the following places, viz:

The first beginning on the east bank of the Penobscot River, opposite the five islands, so called, and running up said river according to its course, and crossing the mouth of the Mattawkeag River, an extent of

six miles, and to be laid out in conformity to a general plan or arrangement, which shall be made in the survey of the adjoining townships on the river - one other of said townships lies on the opposite or western shore of said river, and is to begin as nearly opposite to the place of beginning of the first described township as can be, having regard to the general plan of the townships that may be laid out on the western side of said Penobscot River, and running up said river according to its course, six miles, and extending back from said river six miles. Two other of said townships are to begin at the foot of an island, in West branch of Penobscot River in Nolacemeac Lake, and extending on both sides of said lake, bounding on the ninth range of townships, surveyed by Samuel Weston, Esq., which two townships shall contain six mile square each, to be laid out so as to correspond in courses with the townships which now are, or hereafter may be surveyed on the public lands of the State. And the said tribes do also release and discharge, said Commonwealth from all demands and claims of any kind and description, in consequence of said tribe's indenture and agreement made with said Commonwealth, on the eighth day of August, one thousand seven hundred and ninety-six, by their commissioners, William Sheppard, Nathan Dane, and Daniel Davis, Esquires; and we the under signed commissioners on our part in behalf of said Commonwealth, in consideration of the above covenants, and release of the said Penobscot tribe, do covenant with said Penobscot tribe of Indians, that they shall have, enjoy and improve all the four excepted townships described as aforesaid, and all the islands in the Penobscot River above Old Town and including said Old Town Island. And the commissioners will purchase for their use as aforesaid, two acres of land in the town of Brewer, adjoining Penobscot River, convenient for their occupation, and provide them with a discreet man of good moral character and industrious habits, to instruct them in the arts of husbandry, and assist them in fencing and tilling their grounds, and raising such articles of production as their lands are suited for, and as will be most beneficial for them, and will erect a store on the island

of Old Town, or contiguous thereto, in which to deposit their yearly supplies, and will now make some necessary repairs on their church, and pay and deliver to said Indians for their absolute use, within ninety days from this date, at said island of Old Town, the following articles viz: one six pound cannon, one swivel, fifty knives, six brass kettles, two hundred yards of calico, two drums, four fifes, one box of pipes, three hundred yards of ribbon, and that annually, and every year, so long as they shall remain a nation, and reside within the Commonwealth of Massachusetts, said Commonwealth will deliver for the use of said Penobscot tribe of Indians at Old Town aforesaid, in the month of October, the following articles viz: five hundred bushels of corn, fifteen barrels of wheat flour, seven barrels of clear pork, one hogshead of molasses, and one hundred yards of double breadth broadcloth to be of red color one year, and blue the next year, and so on alternately, fifty good blankets, one hundred pounds of gunpowder, four hundred pounds of shot, six boxes of chocolate, one hundred and fifty pounds of tobacco, and fifty dollars in silver. The delivery of the articles last aforesaid to commence in October next, and to be divided and distributed at four different times in each year among said tribe, in such manner as that their wants shall be most essentially supplied, and their business most effectually supported. And it is further agreed by and on the part of said tribe, that the said Commonwealth shall have a right at all times hereafter to make and keep open all necessary roads, through any lands hereby reserved for the future use of said tribe. And that the citizens of said Commonwealth shall have a right to pass and repass any of the rivers, streams, and ponds, which run through any of the lands hereby reserved, for the purpose of transporting their timber and other articles through the same.

In witness whereof, the parties aforesaid have hereunto set our hands and seals.

Edw'd H. Robbins. (Seal.)
Dan'l Davis. (Seal.)

Mark Langdon Hill. (Seal.)

his
John X Etien, Governor. (Seal.)
mark

his
John X Neptune, Lt. Governor. (Seal.)
mark

his
Francis X Lolon. (Seal.)
mark

Nicholas Neptune. (Seal.)

his
Sock X Joseph, Captain. (Seal.)
mark

his
John X Nicholas, Captain. (Seal.)
mark

his
Etein X Mitchell, Captain. (Seal.)
mark

his
Piel X Marie. (Seal.)
mark

his
Piel X Penuit, Colo. (Seal.)
mark

his
Piel X Tomah (Seal.)
mark

Signed, sealed and delivered
in presence of us:

Lothrop Lewis
Jno. Blake,
Joseph Lee,
Eben'r Webster,
Joseph Whipple.

PENOBSCOT, ss. June 30, 1818. Personally appeared the aforenamed Edward H. Robbins, Daniel Davis, and Mark Langdon Hill, Esquires, and John Etien, John Neptune, Francis Lolon, Nicholas Neptune, Sock Joseph, John Nicholas, Etien Mitchell, Piel Marie, Piel Penuit, and Piel Tomah, subscribers to the aforegoing instrument, and severally acknowledged the same to be their free act and deed.

BEFORE ME,
WILLIAM D. WILLIAMSON, Justice of the Peace.

PENOBSCOT, ss. Received July 1, 1818, and recorded in book, N.4, page 195, and examined by
JOHN WILKINS, Register.

Copy examined
A. BRADFORD, Secretary of
Commonwealth of Massachusetts

Section 3

REPORT
of
JOINT SELECT COMMITTEE
on
INDIAN LAND CLAIMS

The Joint Select Committee on Indian Land Claims would like to present for the record its findings and intentions in voting on L.D. 2037, "AN ACT to Provide For Implementation of the Settlement of Claims by Indians in the State of Maine and to Create the Passamaquoddy Indian Territory and Penobscot Indian Territory." During the course of its deliberation on this bill, the Committee received a great deal of information from the office of the Attorney General and representatives of the Passamaquoddy Tribe and Penobscot Nation, including their counsel. The information and interpretation developed during the committee deliberations are an integral part of the committee's understanding of the bill and were included in the committee's discussion and decision.

It is the understanding of the Committee that L.D. 2037 is a basic document establishing the principles of the relationship between the State and Indians residing in the State. It is more of an organic document than a specific bill, and thus it seeks to establish the broad and basic provisions of this relationship, rather than the intricate details. Because of this nature of the bill, it was not drafted to refer to specific provisions of state law, but to refer to the basic principles of state law that have remained constant. Thus, it is important that the Committee state that it was considering this bill in the context of present state law, and in some instances, understood that certain specific statutory determinations found elsewhere in State law applied to its intent in the bill. The Committee did not amend the bill to reflect the specific statutory understanding because that would interfere with the bill's purpose of establishing basic principles.

It is the understanding and intent of the Committee that this bill establishes the basic principle of full state jurisdiction over Indian lands within the State, including Indian Territory or Reservations. The bill provides specific exceptions to this principle in recognition of traditional Indian practices and the federal relationship to Indians. The Committee understands that these exceptions are being granted to resolve the long-standing disputes between the State and Indians, and intends that this resolution will provide the basis for harmoniously developing the relationships between Maine's residents. Except for the specific provisions of this bill, Maine's Indians are to be full citizens of the State with all the rights and duties incumbent on that relationship.

It is the understanding and intent of the Committee that the answers to specific questions posed by legislators contained in the memorandum to the Committee from Attorney General Richard S. Cohen, dated April 2, 1980 applies to this bill and accurately interprets its provisions.

It is further the understanding and intent of the Committee that the following specific interpretations apply to the bill:

1. The definitions currently used in Title 12, section 7001 relating to inland fisheries and wildlife apply to the use of those terms in this bill, unless the context clearly indicates otherwise.

2. The authority of the Passamaquoddy Tribe, Penobscot Nation and Tribal-State Commission under this bill are limited to regulating the taking and possession of fish and wildlife. That authority does not include any authority over stocking, propagation and selling or disposition, which remain subject to general state law.

3. The provision on transportation of fish and wildlife permits transportation within the State but outside of Indian Territory if the fish or wildlife was legally taken in Indian Territory. This provision does not exempt that transportation from other legitimate state police power regulation, including requirements relating to public health, sanitation, registration, sale or disposition.

4. The provisions relating to Indian sustenance hunting and fishing apply only to hunting or fishing for personal or family consumption. They do not apply to hunting or fishing to maintain a livelihood or other commercial purpose.

5. The jurisdictional provisions relating to fish and wildlife use the term "sides of a river or stream" which means the mainland shore and not the shoreline of an island.

6. This bill continues without restriction the power of the State to determine the assistance it will offer for roads or highways.

7. The exemption from State taxation for the income from the settlement fund is an exemption from state income taxes.

8. The provision for payment by the Tribe or Nation of a fee in lieu of taxes on real property will apply only to the real property in the Territory that is actually located within the jurisdiction of the taxing authority. Thus, payments to a county in lieu of county taxes would be based on the valuation of the portion of Indian Territory that is within that county's boundaries.

9. The tax exemption granted by this bill to Indian property is not a new exemption under the Maine Constitution, Art. IV, Pt. 3, §23. Because of the "municipal status" granted to Indian Territory by this bill, the existing exempt status of "government purpose" municipal property applies.

10. The scope of the tax exemption for "governmental pur-

poses" granted to the Indians under this bill is to be governed by the limitations established by the general statutes, rules and case law governing those exemptions in all other municipalities in the State.

11. The definition of "business capacity" under the taxation provision of this bill means that capacity and resulting acts which any resident of this state could take in a private or corporate form without being a governmental agent or agency.

12. The requirement for municipal approval under section 6205, sub-§5, before property within the municipality may be added to Indian Territory or Reservation applies to property acquired in any manner, including property received in return for property taken by eminent domain or property purchased with the proceeds of a taking under eminent domain.

13. The selection process and requirements for selecting a tribal school committee are internal tribal matters governed solely by tribal law. The standards for operating the school and school committee, including teacher certification, curriculum, hours, records and other operational requirements are governed by State law.

14. The boundaries of the Reservations are limited to those areas described in the bill, but include any riparian or littoral rights expressly reserved by the original treaties with Massachusetts or by operation of State law. Any lands acquired by purchase or trade may include riparian or littoral rights to the extent they are conveyed by the selling party or included by general principles of law. However, the Common Law of the State, including the Colonial Ordinances, shall apply to this ownership. The jurisdictional rights granted by this bill are coextensive and coterminus with land ownership.

Finally, it is the understanding of the Committee that Congress may provide that certain provisions of this bill may not be amended without the consent of the Indian Tribe, Nation or Band that will be affected by the amendment. However, it is also the understanding and intent of the Committee that the state retains exclusive and unlimited discretion and authority to amend or repeal any statute relating to Indians that is not contained in this bill and to enact, amend or repeal general law even though it may have an effect on the powers or duties of the Tribe, Nation or Band as provided by this bill.

This Committee believes that subject to this interpretation, this bill will provide a firm basis for a strong and sound relationship between Maine's Indians and other citizens. It is a major accomplishment of all parties that this difficult, complex and possible devisive controversy can be resolved in such a reasonable and satisfactory manner.

Signed.

Senate: Samuel W. Collins, Jr.
Senator Samuel Collins, Jr.
Chairman

House: Bonnie Post
Representative Bonnie Post
Chairman